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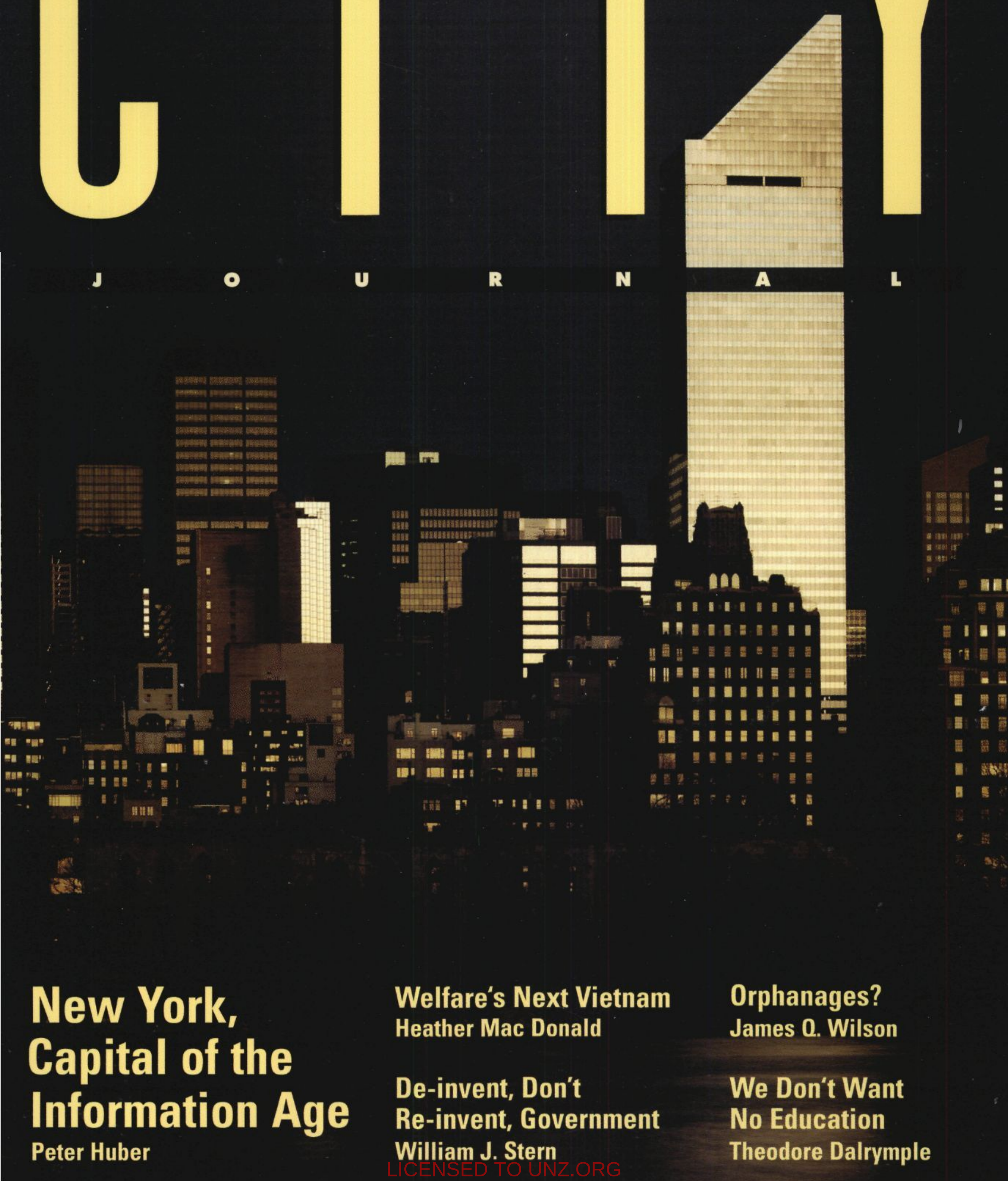

New York, Capital of the Information Age

Peter Huber

Welfare's Next Vietnam

Heather Mac Donald

De-invent, Don't Re-invent, Government

William J. Stern

Orphanages?

James Q. Wilson

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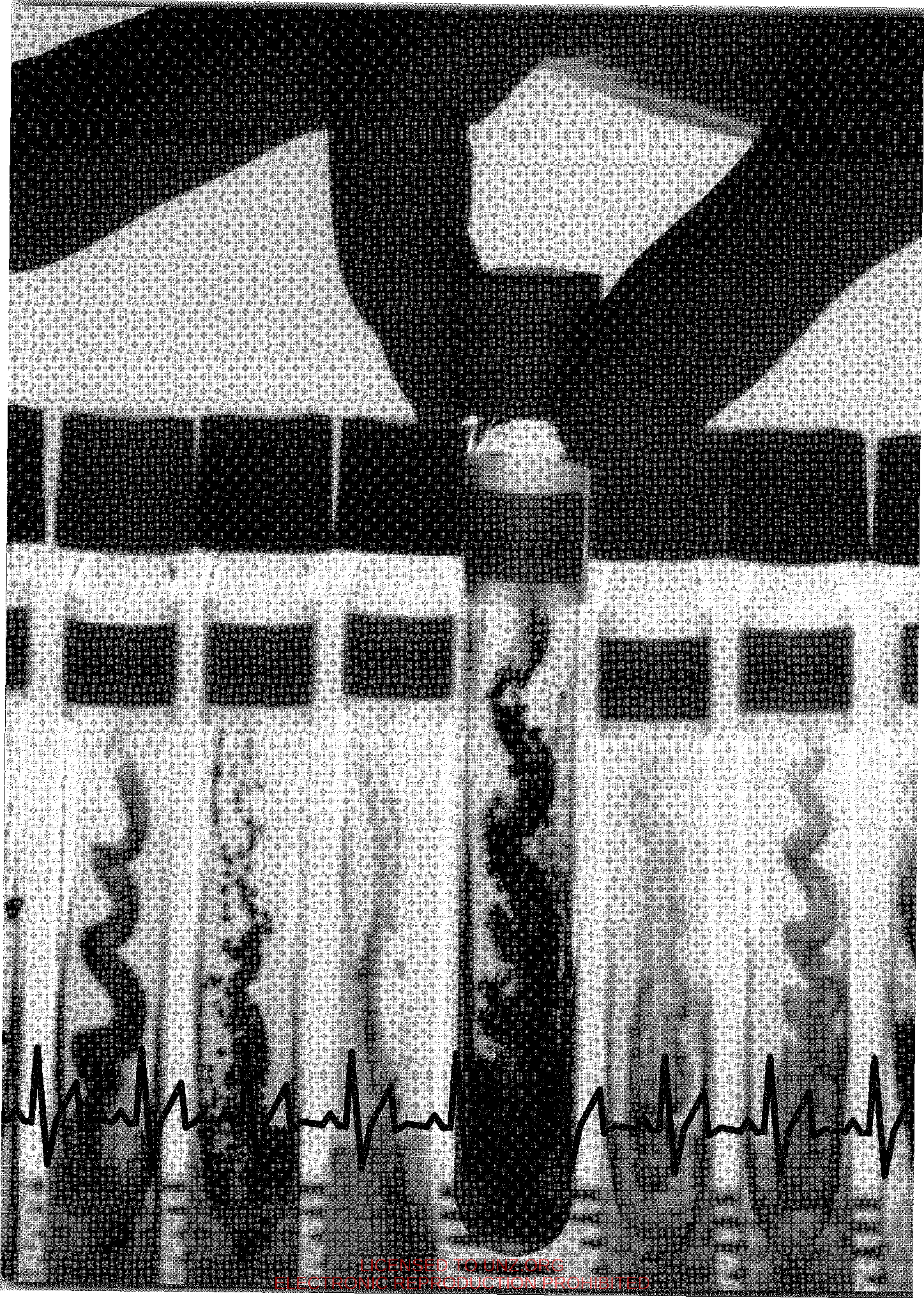

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CITY
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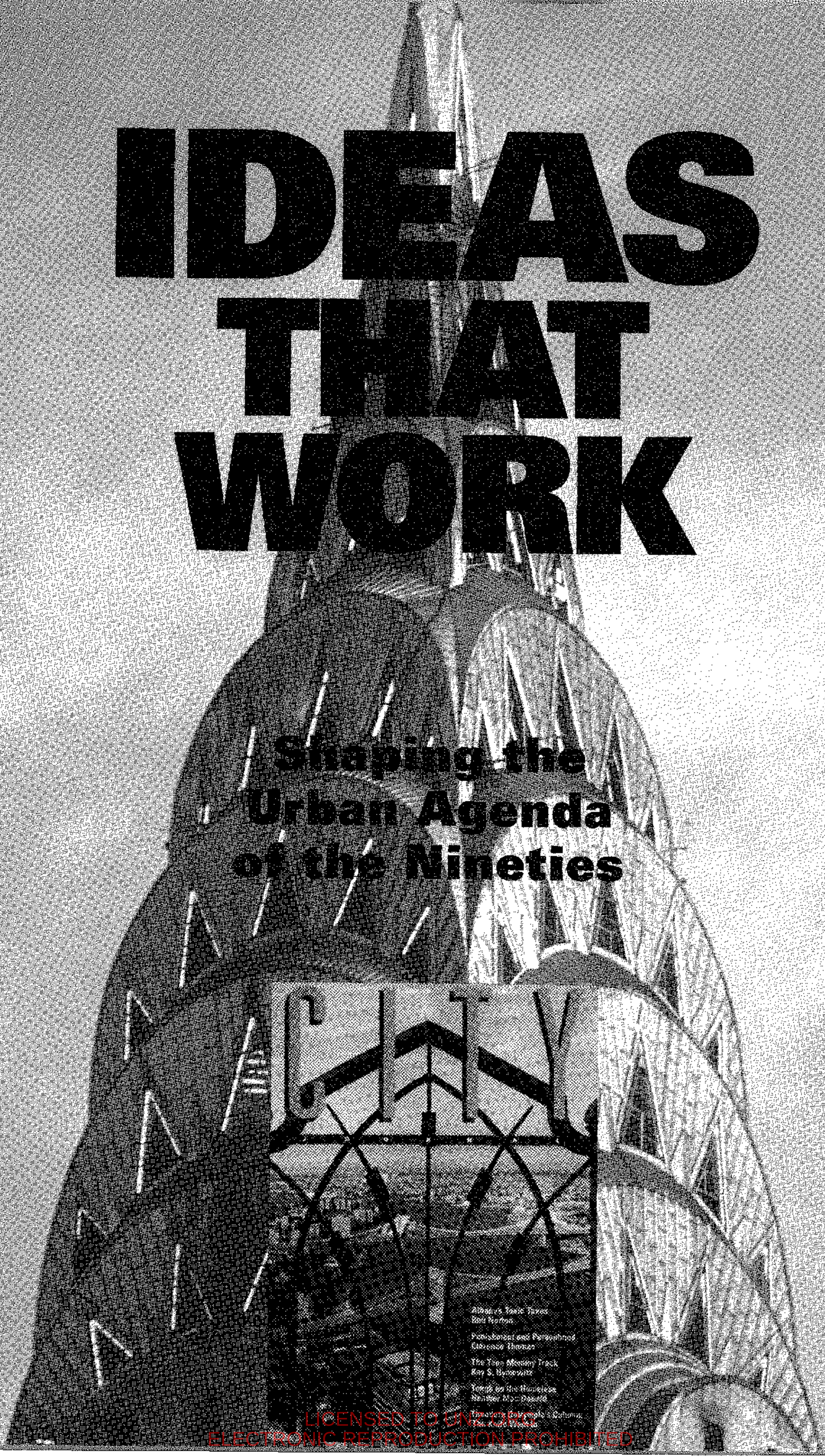

IDEAS
THAT
WORK
Shaping the
Urban Agenda
of the Nineties
CITY

In Prospect

When Plato sketched out his ideal republic, he didn't start with laws or institutions; he began with children and their education. He knew, as modern political scientists often forget, that perfecting the machinery of government won't build a well-ordered community unless what's in the minds and hearts of citizens is cultivated with equal care. People may obey laws and make important life choices in response to the pressure of policemen or the incentive structure of this or that policy; but the main force that makes them law-abiding and industrious and inventive comes from within—from their beliefs and values, their knowledge and ideals, their sense of citizenship and identification with the purposes of the community. All these take form during childhood, shaped by families, schools, and communities.

That inner reality is an important part of *City Journal*'s subject. Insofar as the nation's chief urban problem is that posed by the underclass—the burden of both its social pathology and the costs it imposes of welfare, social services, jails, and so on—attending to that inner reality will be crucial to the urban future. What imprisons the underclass, above all, is both a worldview that makes it hard to grasp opportunity or adapt to economic change, and an internal "life script," in Kay Hymowitz's phrase ("The Teen Mommy Track," *City Journal*, Autumn 1994), that sees as acceptable, even desirable, behavior that will lead to failure. These habitual ways of looking at the outer world and one's own life come into being in childhood.

Below this worldview lies a deeper inner reality—a framework of cognitive and moral concepts, like cause and effect or good and naughty, that children must learn very early to be able to think, to learn, to know right from wrong. These are things that families teach; and in the disintegrated, chaotic families so usual among the underclass, such teaching gets short shrift.

ILLUSTRATION FROM THE OXFORD NURSERY RHYME BOOK.

City Journal has taken the view that welfare's most destructive effect is helping to proliferate families too disorganized to give children the nurture that accomplishes these tasks ("Putting Children First," Summer 1994). In this issue, James Q. Wilson takes up the argument (page 56). He recommends that, instead of a sweeping national transformation, welfare reform should proceed as a series of state-by-state, even city-by-city, experiments bound only by the requirement that they focus on saving the children.

We often look to the schools to supply what parents don't—to expand horizons, to build character and citizenship. It's a commonplace that today's urban schools are failing children: how dismaying to learn, as Lydia Segal, a former counsel for the school system's special commissioner of investigations, writes (page 46), that many New York City school districts are patronage machines where education is the least important consideration.

But as Theodore Dalrymple points out (page 116), children can learn even in bad schools—like those in English inner cities—if they bring the right values to the classroom. Sadly, members of the English underclass, like their American counterparts, resist education, which requires giving up the comforting welfare-state idea that you are a helpless victim, unable to succeed in a world stacked against you.

A more chilling conclusion emerges from Heather Mac Donald's analysis of federal disability programs (page 23). To get the generous benefits offered, many parents try to have their children labeled disabled—which becomes a self-fulfilling prophecy. Worse, a survey of the emotionally disturbed, the drug-addicted, and the alcoholic on disability makes one wonder to what extent urban America is producing a population of unemployables, so damaged by whatever happened to their inner lives in childhood that they are shipwrecked for life. ●

Soundings

A Republican Mandate

The Republican takeover of Congress bodes well for cities. New House Speaker Newt Gingrich and Majority Leader Robert Dole have both promised to act quickly on legislation to curb unfunded mandates—laws requiring localities to spend their own money to carry out Washington-devised programs.

Unfunded mandates are tempting for Congress: they allow lawmakers to take credit for addressing a problem without having to pay for it. Mayors of both political parties argue that such laws—particularly the Clean Air Act, the Safe Drinking Water Act, and the Americans with Disabilities Act—impose huge hidden taxes on cities, draining off the money they need to perform basic municipal services and imposing one-size-fits-all solutions that ignore local needs.

A study by the Price Waterhouse accounting firm found that local governments nationwide spend roughly one-eighth of their budgets on just ten federal mandates. New York City spent $476 million in 1993 complying with those mandates—a small proportion of its total budget (about 2 percent). But that number greatly understates the problem because New York State also passes on half of the cost of its welfare and Medicaid spending—much of it federally mandated—to local governments. These programs cost the city nearly $3 billion in 1993.

"If you put a stop to unfunded mandates, [we] have to rethink the way we legislate," says Representative Gary Condit, a California Democrat who has sponsored mandate-relief legislation. "It means we have to think about how much money this costs and who's going to pay for it."

The mandate-relief proposals range from a ban on any new unfunded mandates to a requirement that Congress prepare an analysis of any new legislation's cost to localities. Congress should take the next step, too, and reconsider many of its existing mandates. Local governments need the freedom to respond to the needs of local citizens, not the dictates of legislators in Washington.

—*Carolyn Lochhead*

What Ending Welfare Would Do

Among the welfare-reform ideas the House Republican leadership has put forth is a proposal to deny welfare benefits to mothers under 18. Unsurprisingly, advocates have blasted the proposal as not just harsh but ineffective. Says David Liederman, executive director of the Child Welfare League of America, "It's all based on a false assumption . . . that money drives whether or not the young woman has a child. Nothing could be further from the truth."

Liederman is right that underclass teenagers don't as a rule have babies in order to get on welfare. But the relationship between welfare and teen pregnancy may be profound even if indirect. Underclass teens' own mothers, after all, frequently accept or even approve of their daughters' early unwed pregnancy. That could well change if the girls lost their eligibility for welfare. The mother would know *she* would have to support and very likely raise a grandchild if her daughter gave birth before becoming self-sufficient. Faced with such a hardship, underclass adults might well become more vigilant about the prospect of their daughters' having a baby.

House Republicans, however, go too far in proposing a nationwide ban on welfare for teen mothers. We don't know whether this approach would work or would have baleful unintended consequences instead. Some experimentation is in order before we leap. (See "Welfare Reform and Character Development," page 56.)

—*Kay S. Hymowitz*

The Twilight of Rent Control?

On November 8, voters in Massachusetts approved an initiative abolishing rent regulation statewide. The electoral earthquake of 1994 also creates new opportunities for sweeping away New York City's half-century-old rent regulations. It is high time to seize these opportunities: it has long been proven that the city's system of rent control and stabilization cripples the housing market and burdens its economy, while benefiting almost exclusively wealthy tenants of luxury apartments rather than the poor.

New York City's rent regulations are scheduled to expire in 1996. If Governor Pataki is serious about revitalizing New York and reinventing its government, all he has to do is veto any bill that would continue rent regulation. It's inconceivable that the Legislature would override his veto, given the State Senate's substantial Republican majority, now led by Joseph Bruno, a longtime critic of rent regulation. Or, as a compromise, the governor could use the threat of a veto to persuade the Legislature to phase out regulation.

Republican control of Congress creates a separate opportunity for rent deregulation. In 1981, New York's freshman Republican senator, Alfonse D'Amato, proposed legislation that would curtail housing subsidies for cities that have rent control, on the principle that the federal government shouldn't rescue cities from their own bad housing policies. Today, with Republicans in control of both houses of Congress and Senator D'Amato chairing the Senate Banking Committee, such a bill stands a real chance of passage. It would give Republicans an opportunity to show they're serious about slashing welfare for the rich.

—*Peter Salins*

Here's What We Have to Reform

In the principal's office at the South Bronx's Morris High School hangs a faded picture of the school's most famous graduate, Colin Powell. It's a reminder that, as recently as the fifties, poor minority youngsters got a decent education in the city's public schools.

Today, the battered old Gothic building cannot protect against the pathologies that afflict the surrounding neighborhood. Heavy security gives the building a prison flavor: at the entrance to the school, a visitor encounters a phalanx of five white-shirted guards armed with hand-held scanners; another ten guards patrol the halls. Every student entering the building is frisked before passing his book bag through an airport-style metal detector. When the bell rings at the end of a period, the guards and some teachers rush into position to move students along, as if they were a group of inmates passing from one lockup to another.

When I visited Morris last spring, assistant principal Gregory Hodge told me that 1,750 students were officially enrolled in the school, but only 800 to 900 show up on a given day. He expected 40 students to graduate in 1994—but only three would pass the test to receive a Regents diploma. In contrast, at least 200 girls at Morris get pregnant each year; more than half of those carry the child to term. School officials know this because the girls usually come into the school's fully staffed health clinic, where they can register for abortion referrals, prenatal care, and day care for their infants. It seems to be the only part of the school that works.

In one school year, two children are murdered, three graduate with a Regents diploma, and 200 become pregnant. These are the measures of the social ecology that any school-reform effort will have to confront. —*Sol Stern*

The New Balkanization

Affirmative action may be crumbling under its own contradictions. Consider the case of Elvia Fernandez, who formerly worked for the New York City Health and Hospitals Corporation (HHC), managing the reconstruction of Brooklyn's Kings County Hospital. She has brought a $1.5 million lawsuit charging that HHC fired her because she's Hispanic. The twist: black activists had demanded that HHC hire a black male for Fernandez's job—as it did.

From across the country comes more evidence of acrimony between minority groups. After a black police officer in Compton, California, beat a Hispanic teenager, Hispanics likened their "oppression" by Compton's black-dominated government to apartheid. The mayor explained the total absence of Hispanics—the majority of Compton's residents—in the city's power structure: budget problems had curtailed city hiring. Such an explanation usually doesn't wash when underrepresentation of blacks is at issue; it didn't satisfy Compton's Hispanic activists, either.

In October 1992, a black member of Los Angeles's school board angrily answered a Hispanic activist's call to hire a a "sensitive Latino" as interim school superintendent: "We are teaching the students that you can be anything you want to be," she said. "But a whole community is saying, 'No, you can't be superintendent unless you are a member of one ethnic group.'"

As minority activists are discovering, quotas lose much of their appeal when someone applies them against you. Better to do away with ethnic preferences altogether than to encourage the ugly spectacle of groups fighting over the spoils.

—Heather Mac Donald

Homeless Follies (Continued)

Litigation over New York City's homeless policy took another bizarre twist recently when Manhattan Supreme Court Justice Helen Freedman ordered the city to pay fines of $50 or $100 per night (for a total of up to $5 million) to homeless families whom it failed to place in emergency shelters. To find families entitled to collect the fines, the state judge ordered the city to take out advertisements, costing nearly a quarter-million dollars, in *New York Newsday* and other papers. The *Newsday* ad contained a form for claimants to fill out with their address and the dates and times at which they were denied shelter.

After losing an appeal to the state's highest court and being threatened with fines and jail, city officials consented to the court order, which absurdly envisions homeless people scanning the legal notices in *Newsday*, then checking their records to find out precisely when they went unsheltered two or three years earlier. The order further seems oblivious to the possibility that more people will declare themselves homeless if they might be able to collect $50 for doing so.

But the real absurdity lies in a judicial approach that has converted a social policy to help the homeless into a rigid legal right to be housed. The right to housing is based on a lower court's questionable interpretation of the State Constitution, the city's "consent" during the Koch administration (which Mayor Koch now says was a mistake), and a directive signed by an appointed state official who later said he never meant to order the city to furnish immediate housing for families. Yet because this mistaken and regretted rule now is embalmed in a state court order, the city's elected officials have no flexibility in dealing with homelessness.

Left to their own devices, city officials might not come up with an ideal homeless policy. But New York City's resources are limited, and it has no way of preventing people from coming to the city to take advantage of generous benefits. Mayor Giuliani, like Mayor Dinkins before him, points out that the city already does more than any other for the homeless. Moreover, the right to immediate housing undercuts the incentive of the homeless to uphold their end of the social contract.

The court's decrees do not resolve any of the hard choices city officials face in making social policy. Doubtless, Justice Freedman sees her order as compelling elected officials to address a serious problem, but once a court mandates a particular social policy, options inevitably shrink, public officials are trapped, and democracy suffers.

—Ross Sandler and David Schoenbrod

Getting Economic Development Backward

Harsh words are flying between New York City and Connecticut over Swiss Bank's decision to move its North American headquarters from midtown Manhattan to downtown Stamford, lured by tax concessions and energy discounts offered by the Nutmeg State.

The Giuliani administration accused Connecticut of "poaching" New York–based companies and threatened to launch a border war by offering incentives for Connecticut firms to relocate in the city. But, as often in diplomacy, the accusation contained a bit of hypocrisy. New York had offered an incentive package of its own to Swiss Bank, which chose Connecticut because its deal was better.

The practice of offering tax incentives to favored corporations, I've argued ("State Capitalism, New York Style," *City Journal*, Summer 1994), is a foolish strategy for economic development. If companies already in New York find taxes high enough to drive them out, how will the city ever attract the small start-up businesses that account for most of the nation's job growth?

Some Connecticut residents realize the futility of such an approach. In response to the Swiss Bank deal, a group of Connecticut small business organizations protested the arrangement on the grounds that they and their neighbors will ultimately have to pay for the subsidies Swiss Bank received for moving to Connecticut. We can only hope that New Yorkers—and their leaders—come to the same realization. —*William J. Stern*

Flush with Enthusiasm

If Paris can have safe, clean public toilets, why can't New York City? The answer lies not in plumbing but in politics. In 1992, the French company JCDecaux demonstrated its self-cleaning pay toilets at three Manhattan locations, intending eventually to introduce them citywide. The toilets were a hit with New Yorkers who tried them, but the forces of opposition proved to be insurmountable.

Disability activists complained that the standard toilets weren't wheelchair-accessible—never mind that JCDecaux had paired each standard unit with a larger one, manned by an attendant, for the disabled. In January 1993, the City Council decreed that any long-term, citywide toilet plan must use only "universally accessible" toilets, even though toilets big enough for a wheelchair would invite occupation by vagrants and others.

And the Council threw in a further stipulation: any company wanting to bid for a public-toilet contract had to demonstrate its product for a year at its own expense (estimated near $1 million), with no guarantee of receiving the contract. It's a high-risk bet, since obstructionists drove JCDecaux out of the city, even though it had already invested in a demonstration.

But even in New York, a determined public official can overcome political obstacles. Deputy Mayor Fran Reiter, self-described as having a "passion for public toilets," has worked indefatigably to make them a reality. She put together a special task force, which found that the Department of Parks and Recreation is subject to fewer restrictions than other city agencies. A German company called Wall City Design, which has developed a wheelchair-accessible toilet that uses electronic sensing equipment to evict vagrants who overstay their welcome, installed one in the park near City Hall. The company will place 15 more toilets in city parks in the spring of 1995 and eventually will install a total of 60.

—*Stephanie Gutmann*

Steady As She Goes

New York City's government is enduring its most stringent budgetary belt-tightening since it narrowly averted bankruptcy two decades ago. Shortly after taking office, Mayor Giuliani slashed the city's expenditures by $1 billion; in November 1994, he ordered additional cuts of $800 million.

But while the city battens down its fiscal hatches, how bad is the economic storm into which it is sailing? Historically speaking, not so bad. The city may indeed face a multi-billion-dollar gap between anticipated revenues and expenditures, but it has no multi-billion-dollar debt to pay off, as in the seventies. And the mayor, in contrast to predecessors Abraham Beame and David Dinkins, has faced his budgetary problems with alacrity, before they could swamp him. Perhaps most surprising of all, those most directly affected by the cuts, municipal labor unions and special-interest groups, have accepted the cuts without their customary noisy outrage.

But danger lies ahead, in a balmy economic climate rather than a blustery one. Gloomy economic forecasts notwithstanding, New York City's economy is reviving, and tax revenues will soon increase substantially. When this happens, it will take heroic determination for the administration to keep the city sailing straight past the familiar, tempting sirens. Having presented austerity as an exigency of tough economic conditions, the mayor will be sorely tempted, when good times return, to increase spending again, just as Mayor Koch did 15 years ago. The urge will seem all the more compelling because of the need to restore essential services eroded by the current round of budget cuts.

When new revenues materialize, as they surely will by 1996, they should go entirely to reducing the city's taxes and debt. Meanwhile, to achieve fiscal stability in the long run, Mayor Giuliani should forgo across-the-board cuts in basic services like education, transportation, and parks (on which New York doesn't spend that much more than other cities) in favor of deeper, structural changes in the city's health, social service, and housing programs, extraordinarily costly by national standards.

—*Peter Salins*

Jurymandering

In an effort to make its jury pool more diverse, New York has become the first state to draw potential jurors from the welfare rolls. How much sense does this make? Consider: Welfare recipients have never been excluded from juries. They enter the pool in the same ways as anyone else—by registering to vote, obtaining a driver's license, filing a state income tax return, or volunteering for jury service.

By using welfare itself as a criterion for finding jurors, the state is adding to the pool only those welfare recipients who have not done any of these things—that is, those who have shown the least inclination to take on the burdens of citizenship. Jury service is a weighty responsibility; it defies logic to choose people for it on the basis of their civic detachment.

—*Richard Miniter*

Programmed for Failure

A recent study of an effort to reduce teen pregnancy shows just how elusive that goal is. New Chance, a program that enrolled teen moms in ten states, spent an average of more than $9,000 per client on "employability development classes," "personal development services," and "family planning services" for 18 months.

The result was dismal. By the program's end, 57 percent of the girls had gotten pregnant again, compared with 53 percent in a control group. This outcome is typical: of four recent teen pregnancy programs, none delayed repeat childbearing; in at least three, births to participants exceeded births to the control group. The reading skills, incidence of depression, drug use, and child-rearing practices of New Chance's experimental and control groups were identical. The only bright sign: 37 percent of the New Chance mothers had earned a high school equivalency diploma, versus

21 percent of the control group.

Proponents of government social services respond to such discouraging results by changing the subject. Robert Granger of the Manpower Demonstration Research Corporation (which developed and analyzed New Chance), has said that the program's failure merely demonstrates that the government needs a more aggressive economic policy: "If the only kind of job you can get pays $4 an hour, this program will never succeed." But paying teens $7 rather than $4 an hour will not instill a sense of personal responsibility. Teaching self-control has for generations been the province of the family; there is still no reason to think that government-sponsored programs can do it. —*Heather Mac Donald*

Off the Rack

New York City's Department of Transportation is considering how to regulate news racks, those eyesore vending machines that obstruct the city's sidewalks. The department will no doubt hear from publishers claiming that the effort imperils their First Amendment right of freedom of the press. Officials should not be intimidated.

The publishers will argue that they have a constitutional right to install news racks on public property, subject at most to minimal regulations essential to accomplish the city's goal of enhancing safety and aesthetics. Further, the argument will go, the government must show that it has comprehensively attacked other nuisances and is not picking on news racks. Any regulations will be subject to judges' "strict scrutiny," which places a heavy burden of persuasion on the city.

Many courts have mistakenly accepted this line of argument, as in a New Jersey decision that struck down a ban on news racks because the government failed to address other visual blights, such as "stores, utility poles, commercial billboards, traffic signs, benches, fire hydrants, mailboxes, street signs, and houses." It's wilderness or news racks—take your choice.

But the U.S. Supreme Court is likely to disagree. Twice, the Court has struck down news rack regulations—but only because the regulations allowed government arbitrarily to bar news rack sales by some publications while allowing them for others, a clear violation of press freedom.

In dissenting from these decisions, four currently sitting justices argued that no one has an inherent right to install anything on a public sidewalk—a view that no current justice has ever disagreed with. As it writes its regulations, the city should keep in mind that it holds the high legal cards, so long as it treats all publications equally. —*Michael S. Gruen*

Cease-Fire in the Water War

In 1993, the Environmental Protection Agency, which administers the federal Safe Drinking Water Act, presented New York City with an unappetizing choice. It could spend $8 billion building massive filtration plants. Or—using the city's authority under state law to regulate the region that supplies its water—it could impose draconian land-use restrictions in the 2,000-square-mile, seven-county upstate watershed. (See "New York's Needless War over Water," *City Journal*, Winter 1994.)

New York doesn't have an extra $8 billion, and the new land-use regulations would worsen city-upstate tensions. But the dilemma resulted from federal regulatory overkill: the Catskills/Delaware area that supplies 90 percent of the city's water is virtually pristine. Happily, the Giuliani administration chose a prudent middle course. It is buying land near reservoirs and upgrading its wastewater treatment plants along watershed tributaries. It also won a waiver from federal rules until the end of 1996, when it can apply for an extension. The mayor stood his ground against a powerful environmentalist lobby, led by Robert F. Kennedy Jr.'s organization Hudson Riverkeeper. He thereby saved the city billions and spared upstaters from onerous regulations.

—*Richard Miniter*

New York, Capital of the Information Age

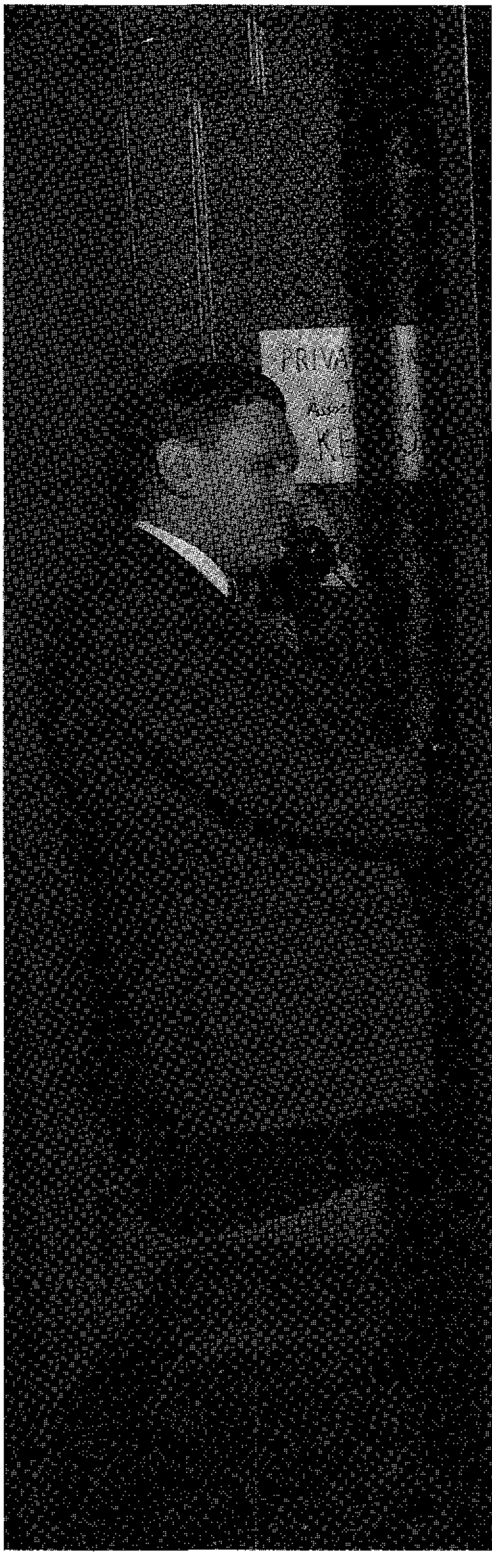
Instead of spinning Gothamites off to the slopes of Vail and the shores of Boca Raton, telecommunications technology makes New York the indispensable hub of the information universe. The challenge: to keep it that way.

Peter Huber

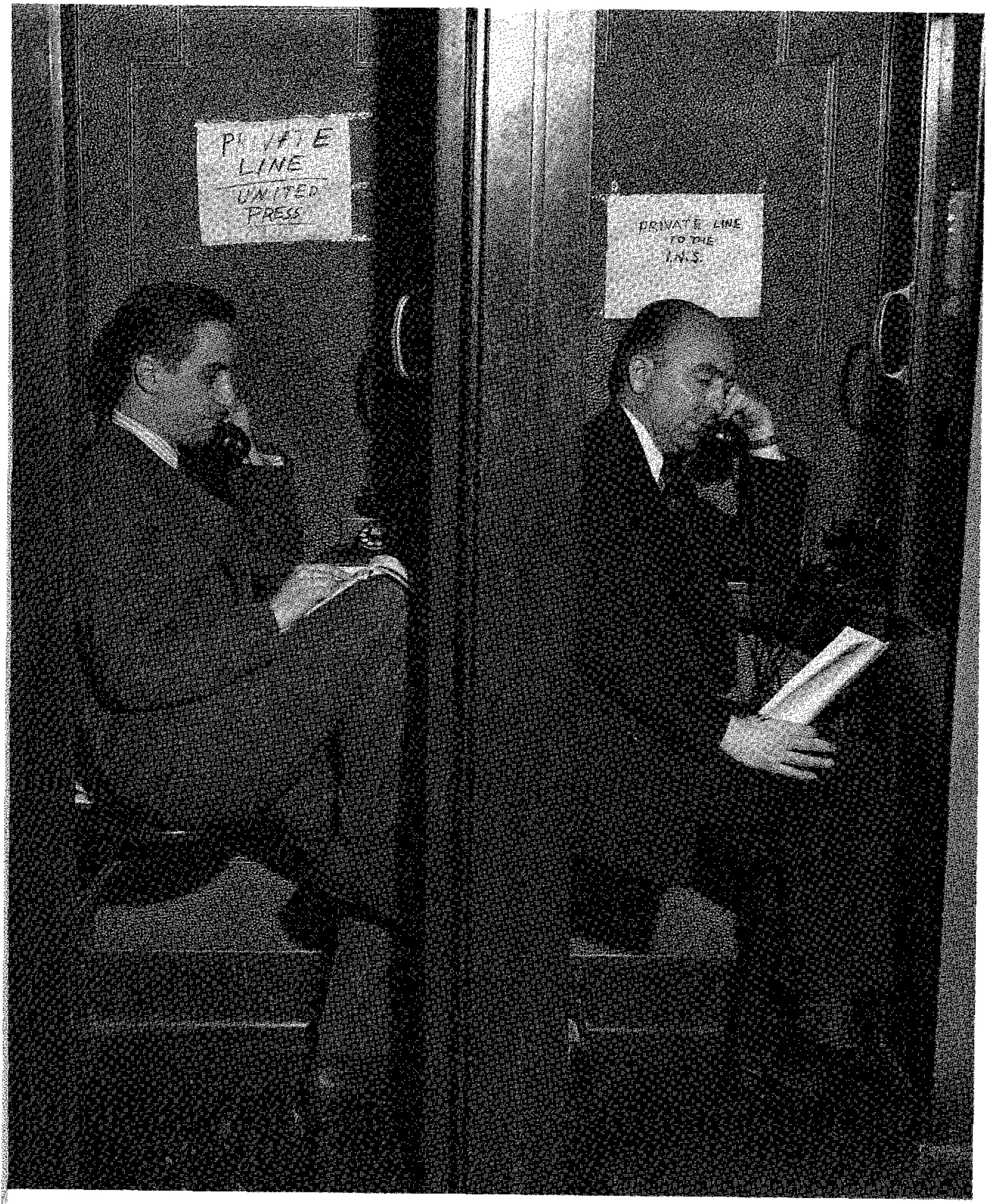
It's about to rain. You're standing at the corner of Park Avenue and 55th Street, a human semaphore, your right arm waving uselessly at the sky. There are empty cabs cruising the streets two blocks away—you know it. If your arm were just 150 yards longer, the connection would be made. This is a failure to telecommunicate.

Why are there still so many New Yorkers around to hail cabs anyway? Before fiber-optic glass, asymmetric digital lines, and the Internet, the answer was obvious. The grime and crime didn't matter: legal, financial, and intellectual talent flocked to the city regardless, because everyone else did, or already had, or soon would. If you wanted to borrow a billion, or wrap up the deal in legal paper, or entertain the world, the people you needed were a cab ride away. You had to be there because they were.

With today's tele-electronics, you don't. Anyone anywhere can have a virtual seat on the stock exchange or a videoconferenced presence in the boardroom. Being on Wall Street or Madison Avenue in the flesh isn't such an advantage anymore. To be sure, you can't lubricate a deal over lunch at Lutèce by way of the Internet. But an enormous number of connections people used to make by taxicab can now be made by wire. If we were inventing the stock exchange today, it would not be a building in New York; it would be a far-flung network, a sort of Internet of brokers, traders, and principals.



Ace wire service reporters file stories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CULVER PICTURES

from the 1940s White House to their New York headquarters.

There is, indeed, a small, all-electronic futures exchange up and running on the Internet. Also on-line are the Interbank currency market (which dwarfs the stock market), Globex (an after-hours global electronic exchange for financial futures), Access (an after-hours global electronic extension of the New York Mercantile Exchange), and NASDAQ, which markets itself as "the stock market for the next hundred years" (although twice the system was brought down by a squirrel with a taste for telecom cables). Every financial, legal, pedagogical, and entrepreneurial enterprise of importance is being networked—first within offices, then across cities; then the networks themselves are networked, within cities and beyond.

Architecturally speaking, the Internet is the exact opposite of the traditional metropolis. It is urban sprawl carried to the electronic limit, a network of networks, with Aspen's and New York's of equal dignity so far as the routing of bits and fortunes is concerned. The great traditional centers of capital and influence should be flattening out, the skyscrapers melting not just into New Jersey but into Kansas. The telecom revolution should be bad news for the metropolis. But it isn't. And, with proper management, it won't be.

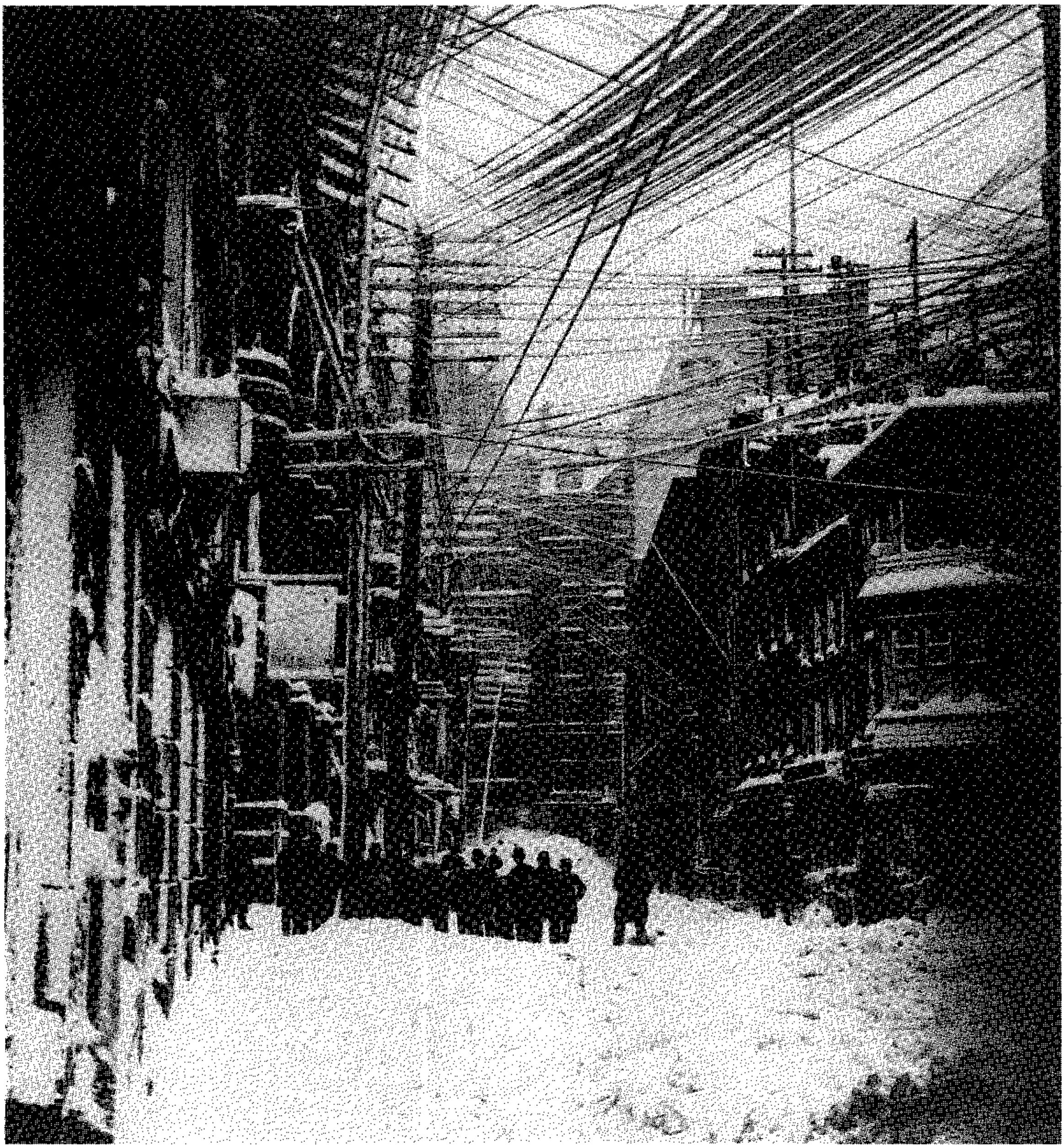
New York begins with its inheritance. A trillion dollars of financial transactions move over New York's telephone lines every day. More than 13,000 corporations are headquartered in Manhattan alone. ABC, CBS, NBC, and Fox are here. George Soros is here. One-third of all national cable networks are headquartered in the city or nearby, twice as many as in Southern California. In the film and TV industry, the city is second only to Los Angeles. New York has 100 sound studios, 100 sound stages, 60 camera lighting companies, and 100 editing companies; all told, more than 6,000 businesses support New York–area film and video production. Madison Avenue rustles up the advertising that supports most of the broadcast media.

"The talent," in short, still shaves, models, dines, and strokes in the city. A huge share of the flesh-to-flesh contact that's still so central to human creativity still occurs in densely packed downtown and midtown Manhattan. Countless millions want a piece of New York talent to invest in, bank with, trade through, or just laugh at late on a Saturday night. That's the good news.

The bad news is that those millions don't care—often don't even know—where the talent is performing. New York, Hollywood, London . . . it doesn't matter, so long as the stock moves, the bits sum up on the spreadsheet, the pixels light up entertainingly on the screen. If you could pick up New York's talent—the whole seething beehive—one Friday evening and set it down in Oshkosh on Saturday, the money, the news, and the laughter would still work their same magic around the globe come Monday morning.

Or would they? For the other thing the city still has far more of than anyplace else is the raw technical power to coordinate and project the talent outward, through glass, coaxial cable, microwave, and satellite. What makes Bill Cosby funny is the whimsical software loaded in a few cubic inches of his skull; what makes him rich is television. What makes New York rich is talent too—plus the unequaled power to project talent electronically around the planet.

Here too, the city owes much to its inheritance. The American Telephone & Telegraph Company, formed in 1885, claimed New York as its headquarters. The inventors, the patents, and the Yankee entrepreneurs were in Boston, recounts historian Robert Garnet; but New York married big business and big finance with transportation and telecommunication. (See "The Robber Barons' Bum Rap," page 90.) New York Telephone installed its first exchange at 82 Nassau Street in 1879; the same year New York and Brooklyn were connected by four cables across the Brooklyn Bridge. By 1903, Manhattan generated 20 percent of Bell's nationwide profits. The first transcontinental call was made from New York, by Alexander Graham Bell, to his assistant, Watson, in San Francisco. In 1935, two AT&T executives in the same New York City building talked to each other over the first telephone signal to circle the globe.



THE BETTMANN ARCHIVE

By 1888, the wires of three phone companies roofed Manhattan.

Without question, New York remains the unrivaled telecom hub of the planet today. By itself, it generates 5 percent—$7.5 billion—of the telephone industry's $150 billion annual nationwide revenues. All programming that originates in the Manhattan studios of the four major TV networks, all the programming for their national radio and cable networks, flows out from the city to the rest of the country over a vast ganglion of telecommunications that begins and ends in the heart of Manhattan. Before the distilled product goes out, an even larger torrent of raw information pours in, over equally capacious electronic facilities. In electromagnetic terms, the city is both a huge, quivering antenna—a giant receptor of telephone, radio, and photonics—and also the brightest beacon on the planet, a cyber-quasar pumping out vast amounts of energy in the form of radio waves and glass-encapsulated laser light.

CBS's Manhattan-based news-gathering organization, for example, coordinates 105 remote satellite earth station uplinks, which transmit video feeds from earth to satellite and back down to Manhattan. Viacom (owner of MTV and Nickelodeon) and HBO both connect to satellites in geosynchronous orbit through earth stations on Long Island. Westinghouse-owned Group W Satellite Communications, the largest satellite video distribution company in the country, uses an earth station in Glenbrook, Long Island, to distribute programming not only for broadcast and cable networks but also for the private video networks of GE, IBM, and GTE. IDB Communications, another major provider of satellite services, operates an earth station on Staten Island, a switching center in Manhattan, and a satellite uplink atop the World Trade Center. Through facilities like these, the city draws in information from everywhere, processes it through the human and electronic talent, mixes, combines, synergizes, adds value, and then sends it back out again around the globe.

The city's telecom subway, its underground spiderweb of glass, coaxial cable, and copper, is the best there is—a digital bullet train in a world that still relies mostly on horses.

Staying far ahead of the telecom pack is not easy. It requires doubling the power and sophistication of your wires and transmitters about every two years: that's how fast the technology improves—how fast a contender can grab a technological edge, widen it, and then aspirate the talent, like a liposuction surgeon going after the cellulite. Almost a century ago, New York lost the movies because Hollywood offered better lighting—more sun. In 1975, Manhattan missed the first wave of cable-casting because Ted Turner happened to live in Atlanta. Cable—a $20 billion-plus industry today—was nothing until Turner transformed his small UHF station in Atlanta into a "superstation" by beaming the signal up to a satellite and then down to cable systems across the continent. Far more Americans love (or love to hate) the Yankees than the Braves; more people in Butte would be interested in tuning in to New York's "local" fare than Atlanta's. The first superstations, and the whole satellite cable-casting industry they spawned, should therefore have been launched from New York. Somebody dropped the ball, and they weren't.

Happily for the city, however, lots of other things have gone right. A fortunate confluence of market forces and forward-looking regulatory policy has kept New York out ahead of the pack. So far, at least.

In assessing the state of New York's telecosm, the thing to understand first is that the telecosm revolves around telephones, not television. Television, with all its glitz, is about a $26 billion market nationwide; cable another $24 billion. Telephony, by contrast, generates about $150 billion a year. Calls to 800 numbers alone generate some $7.8 billion a year, more than the total television revenues of CBS and NBC combined. Though scarcely a decade old, and still growing at breakneck speed, cellular telephony is already an $11 billion industry. Wealth—the city's and everyone else's—depends for the immediate future far more on the two-way wires next to the sewers than on the one-way perturbations of the electromagnetic spectrum in the stratosphere.

And in the vicinity of its sewers, New York is still doing very well indeed. The city's telecom subway, its underground spiderweb of glass, coaxial cable, and copper, is the best there is—a digital bullet train in a world that still relies mostly on horses. The telecosm below, lit by laser, bounded by glass, maintained by skillful telecom troglodytes, is the one that really counts.

Bell's legatee, New York Telephone (recently renamed NYNEX New York), is the oldest and still by far the largest provider of service in the city. But today it is by no means alone. The dial tone you hear on your office phone most likely isn't generated by NYNEX at all. Dial a four-digit extension, and the call will be completed without touching public wires or a public switch. The nondescript, humming file cabinet probably situated in the utility room down the hall or in your building's basement is a "private branch exchange" (PBX)—telephony's equivalent of a powerful desktop computer, capable of handling all internal calls for an office or the whole World Trade Center.

New York led the way in opening up competition beyond the customer's own premises. In 1983, Merrill Lynch, Western Union, and the Port Authority created the Teleport Communications Group (TCG) to provide satellite uplinks for the region's financial institutions and broadcasters. TCG started with 17 earth stations on Staten Island, linked by fiber-optic cable to downtown Manhattan. Large businesses, it turned out, were more interested in using the new cables to carry traffic within the city—because of their technological capabilities and reasonable price—and to hook up to interexchange carriers like AT&T. For TCG, a new, lucrative business sprang up, centered not on satellites but on new, local, state-of-the-art networks in urban areas. TCG unloaded the dishes and began to deploy more glass. This was the nation's first "competitive access provider" (CAP). Six now serve the city, and a seventh is being built, sending prices down and reliability and quality up.

Competition has not hit the residential sector yet, but it soon will, spearheaded by the cable TV industry. Your cable company will soon be offering you two-way phone service along with one-way video. Time Warner and US West have already announced 1995 plans to do just that over Time Warner's cable affiliate in Rochester. Time Warner has been granted the right to provide local service in New York City. It begins with a base of 1 million cable subscribers in the metro area, and a partner—US West—that is NYNEX's Bell counterpart in 14 western states. (Through a cable affiliate, NYNEX itself provides telephone service in England—in direct competition with the incumbent giant British Telecom.)

Cable's most direct assault on telephony will involve wireless technology. Later this year, cable alliances will bid for radio licenses to provide "personal communications services"—a new generation of wireless phone and data service. Telephony and cable TV are converging fast: in the digital world, a bit is a bit; the same networks readily carry voice, video, and data.

Few New Yorkers have any real awareness of the amazingly fecund telecosm seething under their feet. Accustomed to rent-controlled dilapidation and bureaucracy-induced paralysis, residents of the city have trouble recognizing good government policies when they stumble upon them. But fortunately for the city, fundamental, mostly sensible changes in government policy cleared the path for this efflorescence of competition. And New Yorkers grasped the opportunities before almost anyone else in the world.

One has to understand, first, how badly things began. In the twenties and thirties, both state and federal regulators embraced monopoly as the best arrangement for providing telecom common carriage. They saw competition as uneconomical and inconvenient. The telephone, the copper lines, the local exchange, the trunk lines of the long-distance network—a single provider would take care of them all.

And for decades it did. Almost inevitably, though, Ma Bell became a complacent, corpulent monopolist: technically brilliant, thanks to Bell Labs, but sluggish in bringing that brilliance to market. America had the best telephone system in the world only because the government-owned telephone companies in the rest of the world were even more monopolistic than Bell.

As the electronics revolution unfolded in the sixties, the Federal Communications Commission (FCC) began to rethink things. Gradually it moved "customer premises equipment"—handsets, PBXs, modems, and so on—out of the monopoly franchise of the anointed phone company and into the arena of deregulated competition. This allowed institutional users like Merrill Lynch to build their own telecom hubs, based on private switches and computers. A tiny startup, Microwave Communications Inc., recognized the new possibilities this created: it began offering business customers point-to-point long-distance connections between private hubs on private business premises. The FCC and the courts grudgingly accommodated it; MCI is now a $12 billion concern.

Federal regulators thus cleared the way for competition at the bottom of the network (on customer premises) and at the top (in the long-distance market). But the lion's share of the industry's revenues—about two-thirds—is generated in providing the local wires, local switching, and short-haul toll calls. And this quarter pound of beef in the middle of the telecom whopper remained largely under the jurisdiction of state regulators.

Until recently, most of those regulators still liked the old monopolies. Public service commissions can tax and spend far more than most people realize; at the stroke of a pen they move billions of dollars around the franchise by ordering regulatees to jack up rates here and push them down there.

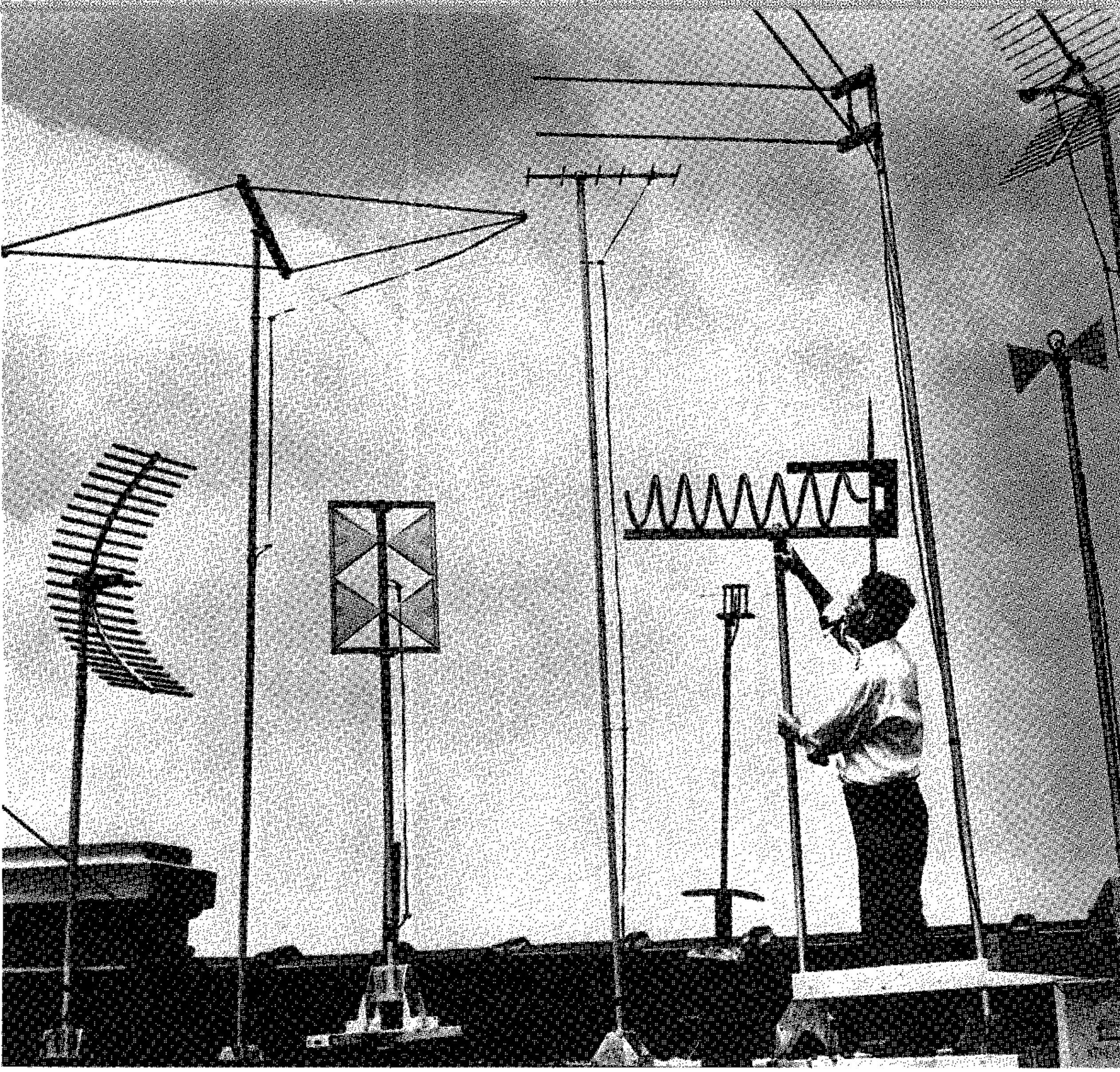
To its credit, the New York Public Service Commission was one of the first to embrace competition wholeheartedly. In 1991, it authorized competition for all in-state services, the first state commission to do so. So far as entering the market and providing services went, competing phone companies were to have all the privileges enjoyed by the local incumbents. Six companies have since been certified to compete against NYNEX in providing service to the city. They include long-distance carriers, CAPs , and cable television operators.

State regulators have made sure that the newcomers get assigned their own "NXX" codes, the first three digits of a seven-digit phone number. This is one of life's little details that induce coma-like sleep in almost anyone but an engineer. But it is an essential detail that regulators have to get right if competition is to prosper. In New York, they did. These NXX assignments serve as an "area code" within a local calling area, designating a switch to which other local, cellular, or long-distance carriers route inbound traffic. Once the assignments are made, competing switches can talk to each other. One competing local carrier has already activated its codes; more codes are being assigned. Now a Washington, D.C., caller who dials the consulting firm Gleacher & Co., for example, is dialing an MFS-Intelenet number; the call can be routed directly from AT&T or MCI to the MFS switch, without ever touching a NYNEX switch or wire.

Perhaps the finest tribute to regulatory policy is that so much of the new competition has been so easy to swallow. When competition between local phone companies was tried a century ago, it was a disaster. (In 1879, there were three telephone exchanges operating in Manhattan.) Competitors in the same town typically refused to interconnect with each other; businesses often had to advertise that they had "both" telephone lines. It drove everyone nuts.

Not this time around. Smart electronics make possible seamless call handoffs among any number of private switches, wire-line carriers, wireless carriers, CAPs, information providers, long-distance carriers, cable companies, and satellite operators. And regulators are making sure that the handoffs are made, both coming and going.

Indeed, New York regulators have blanketed NYNEX with an almost confiscatory array of interconnection and "equal access" obligations. These afford competitors the same kinds of interconnection that MCI and Sprint won in the long-distance arena a decade ago—including the right to set up lines and switches on NYNEX's own premises, literally yards from its own lines and switches. The last significant piece of the regulatory puzzle dropped into place last April, when the Public Service Commission affirmed its own earlier decision that will place all long-distance carriers in the state on an even footing to com-


UPI/BETTMANN

RCA antennas bristling to catch the start of the UHF era in 1952.

pete for short-haul toll calls, such as from Manhattan to New Rochelle.

The upshot is a regulatory environment that truly welcomes new entry. So far as regulation goes, it's much easier to start a phone company in the city than to acquire a cab. There is no $100,000 medallion; each new competitor can pick up or hand off digital passengers at literally thousands of transfer points scattered in closets, basements, and tunnels the length of the island.

And yet, for all the progressive changes already made, regulation still remains the biggest impediment to competition and to the city's long-term interests. The policies at issue here are as seductive as rent control—and as disastrous for New York. The long and short of it is this: New York's basic telephone service is too cheap.

Think of information as tomatoes. Some people grow them by the truckload. Others nurse a few vines in their backyards. What should government do: subsidize the backyard garden by jacking up tolls on the highways and railroads that the big growers need? Or let the wholesalers flood the market? What you like depends on where you live. For New Yorkers, the choice should be clear. Informationally speaking, the city is an Everest of tomatoes.

The trouble for the city is that every government-mediated subsidy, entry barrier, quarantine, and tax favors the small vines and obstructs the giants. Across the board, government telecom policy is aimed at subsidizing expensive, short-haul, small-town introverts at the expense of cheap, long-haul, big-city extroverts.

In the broadcast arena, it's called localism. The FCC's whole approach to assigning TV and radio spectrum is designed to boost the power of local stations, thus obstructing the development of national networks. For years, cable companies were stymied in their efforts to import "distant" broadcast signals, the theory being that if Oshkoshians could watch the Yankees they might stop watching their own Puddle Ducks. To this day, cable companies are still forced to pack channels with local TV broadcasts (a constitutional challenge is creeping through the courts) rather than use the same space for out-of-town fare. In other words, countless cable channels that could be made available in Aspen or Butte for Broadway or baseball from New York are strictly allocated to local video fare from Aspen or Butte.

In telephony, the prices of long-haul calls are jacked up to subsidize cheap monthly rates for local service. When you call New Rochelle or San Francisco from Manhattan, you pay too much; when you call locally for spring rolls or pizza, you pay too little. And across the board, thanks to a second subsidy arrangement, New Yorkers help subsidize basic phone service in rural areas, where the cost of providing it is far higher. The regulatory tax-and-spend policies that make this happen all go under the noble banner of promoting universal service.

But New York loses more than anyone else from such policies—it has by far the biggest heap of info-tomatoes to unload. For while little subsistence farmers don't care about international trade policy, so to speak, nations with factories do. For New York telecommunicators, the paramount objective is to slash the import-export duties. The price of long-distance phone calls has fallen sharply in the past decade, largely because regulators have slashed the "local access" charges that companies like AT&T pay to companies like NYNEX to originate and terminate long-distance calls. But there's plenty more to slash.

The second priority is to unleash the home team. My views on the subject are surely biased—I've done consulting work for NYNEX over the years. New York regulators, however, have recently come around to this position too; the matter is now before the Department of Justice and Harold Greene, the federal judge who, 12 years later, still oversees his decree that broke up the Bell System.

Despite all the competitive inroads that newcomers have made, NYNEX remains by far the largest telephone company in the city. It has the most assets, the most employees, the most wires—and therefore by far the greatest financial stake in making the city's informational economy prosper. But its wires, its switches, every aspect of its operations, are strictly confined within what the lawyers have dubbed "local access and transport areas." The moment NYNEX makes a connection between Manhattan and Boston, it is in criminal contempt of a federal judge.

The theory for the quarantine, as articulated in 1982, is straightforward enough. The local phone company is a monopoly; if allowed to enter adjacent, competitive markets, like long-distance, its monopoly will give it an insuperable advantage over honest competitors. But the monopoly itself is crumbling fast, as I've just detailed, and what remains of it is shored up by government-imposed subsidies.

For now, however, the quarantine remains in place, and the single largest player in New York's telecom market is legally barred from entering the long-distance fray and pouring its own New York–centered investment and innovation into the arena most critical to New York's economy. This is obviously bad for the city. The competition against NYNEX has been unleashed, as it should be: companies like MCI are licensed to provide local service in the city and soon will. In theory, the long-distance carriers and the CAPs can put it all together as well as anyone else, but NYNEX begins with a legacy of local assets and contacts that would make it particularly effective and aggressive in serving New York customers.

Other local phone companies, never having been part of the Bell System, are for that reason already allowed to compete in the long-distance market, furthering the interests of their home communities. Thus Sprint, with a large local subscriber base in Florida and elsewhere, is the third-largest long-distance company in America. And even foreign phone companies face few obstacles in entering the U.S. market: BT (formerly British Telecom) now owns a major share of MCI, and the French and German local phone companies are allying themselves with Sprint. If the home teams in Orlando, London, Paris, or Bonn can build outward full speed ahead, as they can, the home team in New York should be allowed to as well.

The tentative deal struck recently by the New York Public Service Commission and NYNEX (as of this writing it has yet to be formally approved) reflects much of the old mind-set. NYNEX is to freeze residential rates and lower most other rates for seven years—in exchange for which it will be freed from limits on profits and allowed to offer new services. NYNEX subscribers will be able to presubscribe (i.e., just dial 1+) to other carriers for the short-haul toll calls that now go automatically to NYNEX. And New York regulators will support NYNEX's application to enter the long-distance market.

Given political realities, this may be as good a deal as anyone could have struck. Nonetheless, it reeks of the obsolete—and for New York dangerous—idea that the paramount objective of New York's largest telecom provider should be to provide residential customers with cheap local service. For New York residents, prosperity has almost nothing to do with paying a couple of dollars more or less on the monthly local phone bill. It has everything to do with projecting New York's talent outward from the city to the rest of the world.

New York's imperatives, in short, are very different from Oshkosh's or Butte's. The city largely solved the problem of local connection decades ago, by packing millions of people so tightly together that they could all connect by taxicab and lunch, when necessary. The job was finished more recently, when state regulators opened wide the city's local telecom markets; as a result, competition to haul bits under the streets of Manhattan is now the most vibrant in the world. Butte still has to worry, perhaps, about stringing subsidized wires to the ranches ten miles out of town. But Gotham's most urgent priority is to extend its electronic reach to Butte, with the cheapest, most digital, most broadband, most interactive capabilities available—and then to double those capabilities each year, indefinitely into the future.

When you call New Rochelle or San Francisco from Manhattan, you pay too much; when you call locally for pizza, you pay too little.

Unfortunately, it's almost impossible to get anyone very angry about localism or residential subsidies or the unexciting fact that Sprint can hire Candice Bergen to tout long-distance services but NYNEX can't. Few tenants in either Harlem or Trump Tower will gripe loudly about frozen monthly phone rates, and fewer still probably care whether Oshkosh can watch the Yankees. Long-distance prices are lower than they were; getting them lower still just doesn't seem that urgent. New Yorkers are accustomed to—are comfortable with—the Steinberg–*New Yorker* view of the universe: Broadway and Fifth Avenue are big, detailed, and self-contained; and what lies beyond to the west, if noticed at all, is only tiny, empty, flyover country, with perhaps a couple of inconsequential glimmers on the Pacific coast. That, however, is the one view of things New York can no longer afford.

The flyover country is now getting ready to do some overflying itself. It has the power ready at hand. Telemarketers and operators of toll-free phone services already congregate in Omaha, known rather unglamorously as the "800 Number Capital of the World." Labor and real estate are cheap, and being on central standard time is an advantage. Callers don't care where the operators sit, and with glass fiber ubiquitous in the national networks, the telecom costs are almost too cheap to meter. The New York Stock Exchange is still biggest and best, but around-the-clock trading has powerful attractions, and London or Tokyo beckons. Again, the communications facilities are at hand to knit the traders all together. The small investor in Oshkosh will never know the difference.

New York, in other words, could yet become the flyover. LaGuardia and Kennedy have become so already; Wall Street could too. Yes, a critical mass of talent, and eateries to feed and water it, are still vitally important. And yes, New York still has the best of both. But if the city coasts on what it has, the talent will wake up one of these days to breakfast on home fries, not bagels, served in sight of corn and cows.

There is no escaping the fact that telecom technology flattens and decentralizes. There is no escaping the fact that it complements the centrifugal forces that already pull talent out from the heart of the city toward cheaper housing, safer streets, cleaner air, better schools, and lower taxes. There is no getting away from the evolution of the Internet, what engineers call a peer-to-peer linking of nodes and networks on equal footing. The old, centralized, hierarchical networks—resembling the Pyramid of Cheops, with all the power and wealth in a central chamber of the dead—are finished.

And yet . . . and yet every network, indeed every important sphere of human activity, will always have a clearinghouse, an exchange, a central office, a hub, a nerve center, an electronic frontal lobe, where the key connections are established, the key events initiated, the key records maintained and developed. Federal Express flies all its packages through Memphis. Wherever the news correspondents sit, there will still be an anchor desk. The stock exchange, Citicorp, and NBC are just ceaseless flows of will and thought, but the flows still need a locus, a center of inspiration and control. And it is at those points that a cascade of wealth condenses out of the ether. For now, the main centers of thought and control remain in New York, even as the networks themselves expand their reach out to everywhere. So long as New York maintains not only the best local network but also the best links to everywhere else, the talent will stay put, and the city will prosper.

The stock exchange, Citicorp, and NBC are just ceaseless flows of will and thought, but the flows still need a locus, a center of inspiration and control.

What the city needs, then—more than any smaller, less vibrant, less information-intensive community—is a telecom policy that is relentlessly extroverted or, at the very least, not actively hostile to distance. New York business shouldn't be subsidizing New York residents; the mutual interest of employers and employees alike is to build outward, not inward. National television policy should not be promoting localism, or the Puddle Ducks over the Yankees. New York City's largest single provider of phone service—NYNEX—should not be quarantined out of providing any services that dare to reach into New Jersey or Connecticut—or beyond.

The city has to be able to export its vast intellectual capital better, faster, cheaper, more colorfully, more interactively than anyone else. These capabilities will be the deepwater ports, the railroad exchanges, and the customhouses of the twenty-first century. Long-distance antennas and transcontinental glass, satellite uplinks and downlinks, switchers, routers, and multiplexers, the eyes and ears and vocal cords of the electronic age—these are what will keep New York the tallest city on the highest hill. ●

Welfare's Next Vietnam

Heather Mac Donald

Little noticed but fast growing, disability will soon surpass AFDC and become the nation's second-largest welfare program. It is producing AFDC-sized problems too.

By decade's end, the public may well discover that the great welfare reform debate of 1995 addressed only half the problem. The Rivera family of Boston illustrates why. Eulalia Rivera came from Puerto Rico in 1968 and proceeded to raise a welfare dynasty. Her 16 surviving children (the 17th was shot) and their 89 progeny collect $750,000 to $1 million a year in government benefits. Their main form of support, however, is not AFDC, the program for single mothers and children that has been targeted for reform: it is federal disability payments.

Not that the Riveras suffer from crippling physical illnesses or injuries. Most of the family's disabled members collect benefits for their "nerves." As Eulalia's son Juan, a divorced father of five, told the *Boston Globe*: "I have a nervous condition. . . . There is no way I could work." He pointed to his hands, which were shaking. "Look at this," he said: "I'm having an attack right now."

The Riveras represent the future of public assistance. While AFDC costs have grown 23 percent since 1980, the costs of the federal government's two disability programs have more than doubled. By 1998, they will reach $80 billion a year. In 1993, they already enrolled a total of 8.2 million Americans—more than 3 percent of the population. Disability for the poor is the nation's fastest-growing welfare program, about to surpass both AFDC and food stamps as the main form of support for the non-working poor. Workers' disability is ballooning as well: the Social Security disability trust fund will go bankrupt in 1995 and will be bailed out with money from the Social Security retirement fund.

The explosive growth in disability payments reflects an unacknowledged shift in the function of the disability program. Disability increasingly supports people whose main problem is not a traditional medical impairment but a host of social handicaps that no doctor could cure. Many of these newer beneficiaries may indeed be unemployable, but their unemployability reflects rampant drug use, a chaotic upbringing, and a lack of education and work ethic rather than any physical impediment.

Behind this shift in the function of the disability program lies a revolution in the concept of disability, the crowning achievement of 15 years of litigation by welfare- and disability-rights advo-

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cates. American culture now defines as "mental disorders" behavior that other parts of the world might consider simply antisocial or even criminal. This policy is turning disability into a general welfare system for all the poor, including addicts and alcoholics—even including children with behavioral problems, for whom the designation "disabled" becomes a self-fulfilling prophecy, marginalizing them for life.

Running a welfare program under the guise of a disability program is extremely costly. More important, putting people on the dole for life does nothing to alleviate the social conditions that made them unemployable in the first place. It is time to ask whether the expansion in disability entitlements has gone too far.

The federal disability program began modestly in 1956 to support workers over 50 whose severe disability was expected to last indefinitely, preventing them from ever returning to work. Its history since then has been one of almost unbroken expansion.

Currently, the Social Security Administration (SSA) administers two disability programs: the original Social Security Disability Insurance (SSDI)—now for workers of any age who've paid into the Social Security trust fund and whose disability is expected to last a year or more—and Supplemental Security Income (SSI) for the non-working, disabled poor. Unlike SSDI, eligibility for SSI (which also covers the elderly and blind) requires no work history. Like AFDC and other welfare programs, it is means-tested to make sure that the recipient's income and resources are below a certain level. In 1993, 3.7 million SSDI recipients—26 percent more than in 1989—received $34.6 billion in payments, including payments to dependents. SSI had 4.5 million disabled recipients in 1993—37 percent more than in 1989—receiving $19.9 billion.

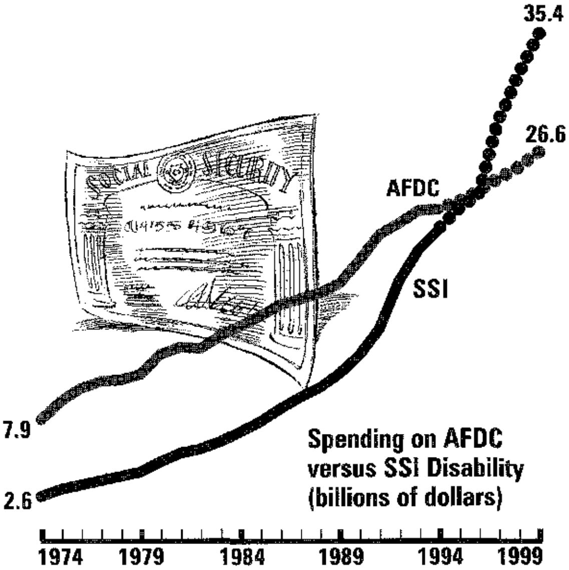
Disability is the ticket to an array of government benefits. The federal government pays up to $458 a month in SSI. Almost all recipients can receive an additional $50 to $60 a month in food stamps; most are automatically eligible for Medicaid. SSI also entitles the recipient to subsidized housing, low-income energy assistance, school lunches, and payments from the federal Women, Infants, and Children program. All told, life on disability commonly entails a tax-free income, in cash and other benefits, of upwards of $10,000 a year.

The current disability explosion results from a chain of reactions set going in the seventies. That decade saw the first major surge in disability applications, fueled by liberalized eligibility standards, a declining work ethic, and rising unemployment. The application and award rates for SSDI reached record levels unmatched ever since, though current rates are rapidly nearing those levels.

But the burden on the Social Security Administration from the jump in SSDI applications paled by comparison with the massive short circuit caused by SSI. Even today, the start of SSI in 1974 is remembered within the agency as an unmitigated disaster. Caring for the disabled poor had traditionally been the responsibility of state and local governments. SSI moved that entire responsibility to the federal government, saddling the SSA with 3 million applications from 1,350 state and local agencies almost overnight. The agency had never before run a means-tested income-support program: determining someone's eligibility for Social Security is far easier than figuring out the income, resources, and living arrangements of a transient, often marginal, population.

When the agency ran into inevitable delays in processing and verifying the new claimants, chaos broke out. Mobs of angry claimants assaulted and spat upon agency workers; federal marshals or private security officers had to be called in. As Floy Newman, a Social Security operations officer in Santa Ana, California, discreetly explains: "Welfare recipients have a different attitude to government" than Social Security beneficiaries.

Toward the end of the seventies, exploding benefit costs and the looming insolvency of the SSDI fund prompted the SSA to try to tighten eligibility standards. At the time—and still today—a claimant could be found disabled by one of two routes. For a so-called medical allowance, the SSA publishes a list of physical and mental impairments deemed disabling in themselves. A claimant is eligible for benefits under a medical allowance if his impairment matches in severity one of the listed impairments, without inquiry into whether he can work. But if his impairment is not as severe as those on the list, he can still win benefits under a "vocational allowance" if he can show that his impairment nevertheless prevents him from performing either his past work or, in light of his age, education, and work experience, any other work generally available in the economy.



Spending on AFDC versus SSI Disability (billions of dollars)

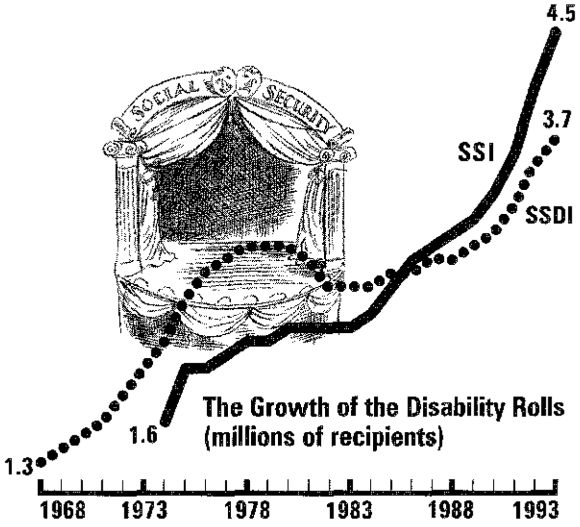
There has always been a tension between the two types of allowance. Critics say that vocational allowances are more subjective than medical allowances and thus result in non-uniform decisions. More important, the vocational evaluation can serve as a cover for importing social considerations—such as a bad or nonexistent education, lack of responsibility and work ethic, and a self-destructive life-style—into the disability determination. For these reasons, the Reagan administration once tried to eliminate vocational allowances altogether but was defeated by welfare- and disability-rights advocates, who fight tooth and nail every attempt to reduce the weight of education and work history in disability determinations.

As for the apparently more objective medical listings, many analysts today question whether they actually correspond to the inability to work. Someone who loses both legs below the knee, for example, is automatically eligible for benefits; with current technologies, though, he undoubtedly could hold a job. And under the 1992 Americans with Disabilities Act he could sue an employer for not hiring him.

By 1975, the percentage of vocational allowances had risen to over 26 percent of claims granted at the first stage of the disability award process, up from 1960's 10 percent. Concerned that the decision-making process was losing its objectivity, SSA revised its eligibility standards to reemphasize medical criteria—but still failed to halt rocketing costs. So in 1980 Congress enacted the Social Security Disability Amendments, which required the SSA to review every three years the continuing eligibility of all recipients who were not permanently disabled. When the Reagan administration took office, it seized upon these amendments as part of its campaign to reduce the size of the federal government. From 1981 to 1984, it reviewed 1.2 million cases and terminated benefits in almost a half-million of them.

The government's effort to rein in disability proved one of the great administrative debacles of recent history. The reviews upset beneficiaries' settled beliefs, born of years of lax enforcement, that they were on the rolls for life. In its roll-slashing zeal, the administration cut people who may not have been disabled when they entered the program but had become so after years of dependency on the dole. The press furnished a running account of cripples turned onto the streets and beneficiaries committing suicide.

The courts revolted. By the end of 1984, all the federal circuits had deemed the reviews illegal. Judges had put 200,000 people back on the rolls—often without evidence of disability—and



The Growth of the Disability Rolls (millions of recipients)

had authorized further lawsuits that could nullify the rest of the reviews.

There is wide consensus that the administration took a meat-ax approach when individualized reviews were in order, but on the central legal point—the SSA's standard for determining continuing disability—the administration was in the right. In requiring a beneficiary to prove that he was currently disabled to continue receiving benefits, the agency was faithfully following a 1976 Supreme Court ruling.

Starting with a 1982 decision by the Ninth Circuit Court of Appeals, however, the judiciary rejected that standard. The lower courts ruled that the SSA had to show that the claimant's medical condition had improved since the initial disability determination before ending his benefits. It was no longer enough to show that he was presently able to work. In fact, the agency itself had employed just such a medical improvement standard from 1969 to 1976 but had abandoned it as unworkable, since for many beneficiaries who'd been grandfathered into the SSI program from the state disability programs, the original evidence of disability, collected years before, no longer existed. The only meaningful standard, the agency reasonably argued, was whether someone could currently work.

Congress, which had started this battle between the agency and the courts with its 1980 mandate to conduct the reviews, stepped in again in 1984. That year, the Social Security Disability Reform Act adopted the medical improvement standard that the courts had imposed on the SSA. Not surprisingly, the agency once again virtually ceased reviewing cases, and now 90 percent of those it does review continue on the rolls. In the SSDI program alone, the cost of not reviewing recipients from 1990 to 1993 will reach $1.4 billion by the end of 1997.

The legacy of the 1980–84 review crisis is enormous, for in the legal counterattack the reviews ignited, advocates brought a series of test cases that successfully challenged and enlarged the SSA's eligibility standards. Ultimately, Congress codified virtually all of these victories in the Reform Act of 1984. With eligibility criteria vastly liberalized by the combined judicial and legislative efforts, the gunpowder trail was laid to produce the explosion in the rolls that ineluctably ensued.

Mental, rather than physical, complaints have fueled the disability explosion, and no legal decision of the early eighties has more affected the current composition of the rolls than one in a 1982 Minnesota suit challenging the SSA's evaluation of "non-severe" mental impairments. The judge held that the agency had been illegally denying benefits to people who, despite their impairments, were able to cope with daily activities such as cooking and shopping. To find such claimants able to work, argued the court, ignores the fact that the work environment poses unique stress for the mentally ill. Chronic mental illness, the decision stated, is "characterized by an exquisite sensitivity to stress and a decrease in coping skills." The court ordered the agency to give greater weight to testimony from claimants' own doctors regarding their ability to work.

The court's holding that non-psychotic mental illness can interfere with the ability to work is unimpeachable, but the chief message of the case was that the agency should evaluate mental impairment claims far more liberally. The decision and its subsequent congressional ratification have given rise to a host of agency rulings and court decisions in which work itself is portrayed as toxic to mental and emotional stability—especially owing to its "competitive nature." The Seventh Circuit rebuked the SSA in 1989 for denying disability to a computer operator who had been fired because of his inability to get along with co-workers. The agency improperly ignored the treating psychiatrist's report, the court held, which had stated that the operator was "unable to work in a competitive environment."

Today, attorneys in disability cases routinely pay $75 for a psychiatric exam for their clients, to make sure that either stress and anxiety or depression is part of most every complaint. Because the agency is now required to defer to the claimant's treating doctor—even if the claimant has seen him only once—it has little recourse when confronted with a boilerplate diagnosis of personality disorder or identity disturbance. "People are playing games because everyone knows we have to follow the treating doctor," complains Arlander Keys, an administrative law judge in Chicago. All over the country, explains Morton Gold of the SSA's Savannah office, attorneys who work closely with certain doctors have made disability into "a budding industry, and profitable."

Many disability claimants belatedly discover mental impairments when their claims for physical impairments are denied. An SSDI claimant in Illinois had unsuccessfully appealed the termination of his benefits after the bone fracture for which he had previously received payments had healed. On his second appeal, he argued that his epilepsy and alcoholism qualified him for benefits. Again he lost. Then he saw a psychiatrist, who diagnosed him with "personality disorder with dependent, antisocial, and passive-aggressive features." This did the trick. A court in 1991 found that his "psychological abnormalities combined with alcoholism lead to the conclusion that he can't meet the minimum standards of a normal competitive work setting." He was, in other words, unemployable.

The 1984 Reform Act further shifted the disability determination process away from objective medical evidence and toward much fuzzier, nonmedical indicators, such as a patient's own description of his condition and his participation in "activities of daily living" and "social functioning," in determining his capacity to work. Evidence of the claimant's behavior necessarily comes from family members and friends—many of whom have a direct financial interest in the disability decision.

Agency rulings and court decisions portray work itself as toxic to mental and emotional stability —especially owing to its "competitive nature."

Because the 1984 act also increased the role of age, education, and work experience in disability decisions, someone who has worked and has some skills can now be denied disability, while someone with the identical impairment but no work history can be found disabled—a clear inequity. In 1991, 31.7 percent of SSDI awards at the first level of the disability determination rested on such vocational considerations, rather than on the medical listings—an all-time high. Though comparable figures are not available, the percentage of vocational allowances in the SSI program is undoubtedly higher still.

As a direct result of the act, mental impairments today constitute the largest portion of the agency's caseload, a radical change from the early years of the program. Fully 30 percent of all SSI beneficiaries are classified as mentally impaired. By comparison, all other categories of impairments—with the exception of mental retardation—are in the single digits. Male SSI recipients between the ages of 30 and 50 have a nearly 45 percent mental impairment rate.

The situation is the same with SSDI. One-quarter of recipients are mentally impaired; for those under 45, the mental impairment rate is 37 percent. Since 1982, mental impairments have increased by more than 500 percent among younger SSDI recipients. And in 1992, applicants making mental impairment claims won SSDI benefits 66 percent of the time, as against only 39 percent for physical impairment claims.

The surge in the number of mentally impaired disability recipients not only has swelled the

Mr. Shaw's Dilemma

When school superintendent David Shaw was fired from his job in Hamden, Connecticut, he must have faced a dilemma. The Hamden school board had locked Shaw out after he pleaded guilty to a drunken driving charge and then disappeared for ten days. He was allegedly wearing women's clothing at the time of the arrest.

Shaw's dilemma was this: Should he file for disability benefits under the Social Security Act, claiming alcoholism, or sue the school board for discrimination under the Americans with Disabilities Act (ADA)—claiming alcoholism? Since its passage in 1992, the ADA has given the disabled a whole new range of options for taking advantage of their disability. If an impaired person can show that a prospective employer failed to hire him because of his impairment, or that his employer failed to make "reasonable accommodations" for his problem, he can collect thousands of dollars in damages.

According to the *Wall Street Journal*, Shaw chose the latter course: he filed complaints at the Equal Employment Opportunity Commission and the U.S. Labor and Education departments, accusing the Hamden school board of discriminating against him because of his mental disorder of alcoholism. Shaw dropped the charges only after the board agreed to pay him a partial salary for three years, plus lifetime medical and life insurance benefits, in exchange for his resignation.

The burdens imposed by the ADA are by now well documented. The act's definition of disability is so vague and expansive that it even includes people merely regarded as having an impairment. Equally expansive is the requirement of "reasonable accommodations." Employers can be forced to spend thousands of dollars on sign-language interpreters, page turners, and job coaches. The mentally ill may be eligible for private offices, flexible schedules, restructured jobs, and time off for treatment. People with infectious diseases who want to prepare food or work as pharmacists mixing intravenous solutions can sue employers who balk at hiring them.

But one of the largest unrecognized problems with the ADA is its conceptual conflict with the Social Security Act's disability programs. According to the Social Security Act, severe alcoholics, drug addicts, and the seriously depressed cannot work and are entitled to disability benefits. But according to the Americans with Disabilities Act, not only can such people work (though in the case of addicts, they must be in recovery), but employers may be liable for not hiring them. The disabled can thus play it either way, depending on what's most advantageous. Many people within the SSA decry the government's failure to address the interaction of the federal disability programs with the ADA. Any attempt even to think about the issue, how-rolls but also has changed the demographics of the beneficiary population. The average age of recipients has dropped. The average SSDI recipient is now below 50. The typical SSI recipient is in his 30s with a high school education or less. Younger recipients stay on the rolls longer; younger recipients alleging mental impairments stay the longest of all. According to the Social Security Administration, individuals between the ages of 18 and 34 with mental impairments stay on SSDI for 25.5 years, 39 percent longer than the average for that age group.

The newfound liberality toward mental impairment is placing severe strains on the SSA. "The more claims we pay, the more people apply," laments the chief administrative law judge in Chicago, Stephen Ahlgren. "Our judicial system is not up to dealing with these numbers." There are 450,000 cases backlogged at the hearings level nationwide; the annual caseload per administrative judge in Chicago has jumped in recent years from 250 cases to 800. Such caseloads prevent judges from developing cases sufficiently to rebut boilerplate diagnoses. And judges are resolving more cases without a hearing—which they can do only if they rule in the claimant's favor.

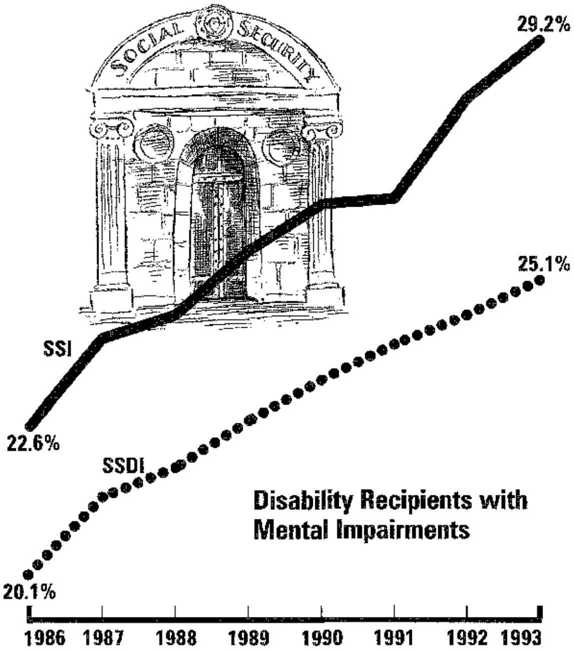
Not surprisingly, frustration with the mental impairment standard is rising. "We're finding a lot of people disabled who can work," says Judge Ahlgren. Jane Ross, associate director of income security at the General Accounting Office, told the *Boston Globe* recently, "For those of us who work and manage stress daily, it's easy to get pretty angry about people who say they can't because of 'anxiety.'"

Though unquestionably mental illness can incapacitate, the courts seem remarkably credulous toward mental illness claims. A 1989 federal court decision in Massachusetts is typical. The court granted the appeal of Linda Zeitz, 42, a former sales rep for Coca-Cola who claimed she had suffered from agoraphobia since 1978 because of her consumption of "birth control pills, junk food, and large amounts of Tab." According to court records, Zeitz described her illness and her seven-year effort to get on SSI as "a typical story of a woman who finally starts thinking about who she is as an independent person, rather than as an extension of a man and family." Numerous

ever, is immediately shot down by disability-rights activists and welfare advocates.

For example, a recent SSA study on streamlining disability determinations contained a vague reference to the ADA in an early draft. Advocates loudly objected, however, to the speculative possibility—not even mentioned in the report—that "a plaintiff may be denied benefits because a hypothetical employer is hypothetically obligated to accommodate him," says Nancy Shor, executive director of the National Association of Social Security Claims Representatives, a 25,000-member organization of attorneys who represent Social Security claimants before the agency and courts. The SSA subsequently deleted the reference to the ADA in later drafts, with apologies for the inappropriate thought.

Yet the possibility that a person with a claim to disability benefits could alternatively require an employer to hire him is very much a real one, and it raises serious questions about the validity of both the Social Security Act's and the ADA's definitions of disability. The Social Security Act appears to define disability far more strictly than the ADA does; in practice, the definitions undoubtedly overlap. Though the passage of the ADA will create nightmares for employers for years to come, it has at least created the opportunity to rethink how the government defines and responds to disability.



visits to doctors had revealed no medical basis for the palpitations, backaches, and headaches she said she had experienced while on sales calls before she quit her job. One psychiatrist did note in 1979, however, that she had recently stopped her long-running marijuana habit.

At the time of the appeal, Zeitz said she left her apartment only for doctors' appointments, though she had managed to run up an $11,000 credit card debt. She was ignoring a psychiatrist's recommendation that she attend group therapy, relying instead on health food, vitamins, and solitary reading as prescribed by a "naturopath" she consulted. An administrative judge had denied her claim, finding only slight functional limitations and citing an agency rule that if a claimant fails to follow prescribed treatment that would restore the ability to work, he will be denied benefits. But the district court ruled that Zeitz was under no obligation to follow the prescribed group-therapy treatment because "a psychosomatic anxiety-related disorder such as agoraphobia may defy any generally accepted prescribed treatment requiring the will of the individual to recover." The court remanded the case for further hearings.

The beast that lies beneath the entire mental impairment caseload is substance abuse. Where there is depression, one of the main mental disorders, there is usually also alcohol or drugs. In most cases, it is impossible to separate the effect of drugs and alcohol from that of the alleged illness itself.

Recent press and congressional attention has focused on a small category of substance-abusing disability beneficiaries: those officially acknowledged as addicts or alcoholics, who are required to be in treatment. But the reach of addiction goes far beyond those addicts, even beyond the mental impairment category generally. Dig deep enough and you will find drugs and alcohol throughout the entire disability system, according to David Fiske, an analyst at the General Accounting Office. Fiske tells of a case that focused exclusively on the claimant's bad back. Buried in the medical records, however, was the fact that the claimant relaxed on Friday nights by drinking a case of beer. "You won't deal with the problems of the claimant's back," says Fiske, "without dealing with the problems caused by those cases of beer."

Morton Gold, the Social Security attorney in Savannah, calls addiction the "Vietnam quagmire of the agency." It forces the agency to turn a blind eye to law breaking and to support destructive behavior. SSA's response to addiction and alcoholism ranges from "enlightened" tolerance, in the case of officially classified addicts and alcoholics, to a sort of willed ignorance in those myriad other cases where addiction is the subtext of other physical or mental disorders.

"Substance addiction disorder" is itself a listed mental impairment. SSA used to give benefits for addiction and alcoholism per se only if the claimant could show irreversible organ damage, but the courts struck down that precondition as too harsh, putting in its place the requirement that the addict have lost the ability to control his addiction. Today, at least 250,000 diagnosed addicts and alcoholics are on the disability rolls, up from fewer than 100,000 five years ago. They receive approximately $1.4 billion annually in benefits.

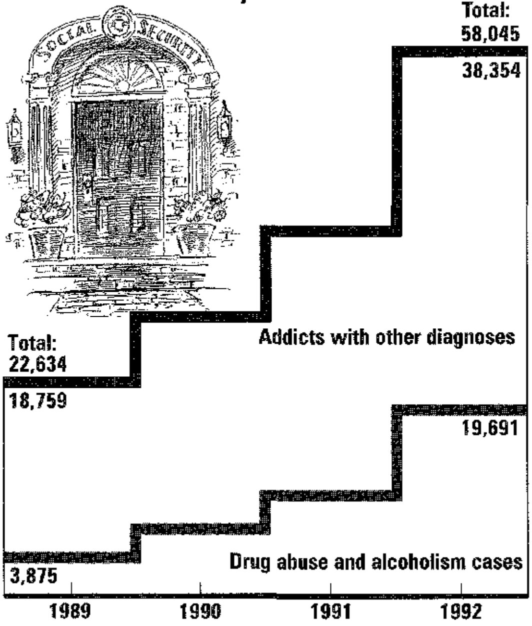
When Congress established the SSI program, it attempted to allay criticism that paying cash to addicts merely bankrolls their addiction. It required recipients whose primary diagnosis is addiction or alcoholism to enroll in treatment. It also obliged them to have their benefits paid to a "representative payee," who is supposed to prevent the addict from misusing his disability check.

Both requirements turned out to be a farce, however. The agency had trouble finding representative payees as far back as 1976; relatives often balk at agency requests to serve, fearing violence should they try to withhold cash from the addict. In recent years, stories have accumulated of benefits being mailed to the corner liquor store or to fellow addicts.

Of the quarter-million addicts and alcoholics on disability, the representative payee and treatment requirements apply only to those 78,000 SSI recipients whose primary diagnosis is alcoholism or addiction. Of these, however, only 9 percent actually are in treatment. What's more, while an average of 2,000 new addicts entered the rolls each month in 1993, only 75 completed treatment. Even completing treatment, though, doesn't generally mean that the addict has been rehabilitated or removed from the rolls. Indeed, the addict has every reason not to conquer his addiction, since that would mean losing his benefits, including Medicaid.

Because the claims and appeals process takes so long—currently, 155 days for an initial decision, and a year and a half for an administrative judge's decision—addicts, like other disability beneficiaries, often receive huge retroactive payments of $15,000 to $20,000. These usually result in protracted binges.

Addicts and Alcoholics Added to the Disability Rolls



On ordinary check days, the effect is similar. A director of a homeless shelter in Denver told Senate investigators that his clients call the first of the month "Christmas Day"; he termed SSI "suicide on the installment plan." Addicts and alcoholics who do not die from their subsidized substance abuse simply become more and more disabled, thus staying on the rolls longer.

In August 1994, Congress extended SSI's representative payee and treatment requirements to SSDI recipients whose primary diagnosis is substance abuse. It also put a three-year cap on addiction benefits for both programs. Given the agency's inability to enforce the treatment and representative payee requirements for SSI recipients, it seems likely that the new SSDI provisions will likewise languish. Even if the provisions could be made to work, however, they apply to far too small a subset of the drug- and alcohol-abusing disability population. Drink enough to develop cirrhosis of the liver, or contract AIDS through IV drug use, and your benefits will come with no strings attached, because you are now disabled irrespective of your addiction.

In some cities, claimants with drug and alcohol problems are overwhelming the administrative hearing system. More than half the nation's officially classified addiction beneficiaries are in

California and Illinois; 98 percent of the cases heard in Chicago in January 1994 involved some element of addiction, according to Chief Judge Ahlgren. Administrative judges there say they are burning out from the addiction cases.

Classifying addiction or alcoholism as a federally subsidized disability not only is highly destructive to the recipients; it also compromises the government. In 1991, officials of the SSA's Chicago office requested guidance from headquarters in Baltimore regarding a type of claimant, exemplified by "Ronald C.," that they were seeing more and more frequently. An addict who used IV drugs three or four times a day and consumed three pints of wine daily, Ronald had spent his adult life in and out of prison for drug-related crimes. He was currently awaiting trial for shoplifting. The question exemplified by Ronald was: How should the agency evaluate someone's capacity to work if he has resided mostly in prison?

Susan B. Parker, associate commissioner for disability at SSA headquarters, issued the agency's response, and it should gladden the hearts of many a convict: while confinement in an institution does not establish the existence or severity

Not Enough Beneficiaries?

New York City's campaign to sign up its schoolchildren for SSI is just a small subset of a national outreach effort. In 1990, SSA won congressional funding for a series of outreach demonstration projects; in less than four years it has spent $27 million on 136 outreach grants and interagency agreements. Those grants have netted 10,000 additional recipients, at a cost of $2,700 a head, not including their benefits.

Public interest groups that make a living out of suing the agency have received generous grants. This year, the Mobilization for Youth, a publicly funded radical advocacy group in lower Manhattan that was part of the original, fruitless War on Poverty, received $150,000 to sign up its clients; the Community Legal Services Organization of Philadelphia, which brought the disability-expanding *Zebley* case and subsequently policed its enforcement, also received a grant for outreach to the mentally ill.

New York State funds its own outreach as well, sending SSA representatives to medical conventions and signing up patients at hospitals and other treatment facilities. Since 1980, it has been sending teams to homeless shelters to process applications virtually on the spot.

For eight years, the state disability determination service has had a pre-release agreement with the state division of parole: when a prisoner who may be eligible for disability is about to be released, the prison notifies the local SSA office, which then sends a representative to fill out an application. "It's a way to get them support if we don't feel they're employable," explains Barry Jacobson, an assistance insurance program specialist in the New York State regional SSA office.

Times sure have changed. When Caspar Weinberger was secretary of the Department of Health, Education, and Welfare, he discouraged the SSA from engaging in large-scale outreach for SSI. The government shouldn't go out of its way, he argued, to encourage people to apply for welfare.

of an impairment, she wrote, it may be "suggestive of factors that are reflective of diagnosis and severity." According to the psychiatrists' *Diagnostic and Statistical Manual of Mental Disorders,* she said, one of the symptoms of "psychoactive substance abuse disorder" was a "great deal of time spent in activities necessary to procure the substance (including theft)." In other words, serving time for drug-related crime works in your favor for getting benefits—and, given the 12-month retroactivity for SSDI benefits, you can even get paid for doing so.

Parker was quick to realize, however, that in answering one question, she had merely raised another. If someone is able to apply himself to "activities necessary to procure the substance (including theft)," shouldn't he then be presumed able to apply himself to work? Far from it, Parker announced. "In contrast to persons who beg for sustenance or 'criminals' who commit illegal acts for a variety of acquisitive goals, the evidence demonstrates that, in this claim, the claimant engages in these activities solely to obtain and use addictive substances." (Apparently Parker is as uncomfortable with labeling people who break the law "criminals" as she is with presuming that people can work.) "It would be unrealistic," she concluded, "to expect the mental functions that the claimant demonstrates to be successfully employed and sustained in work situations."

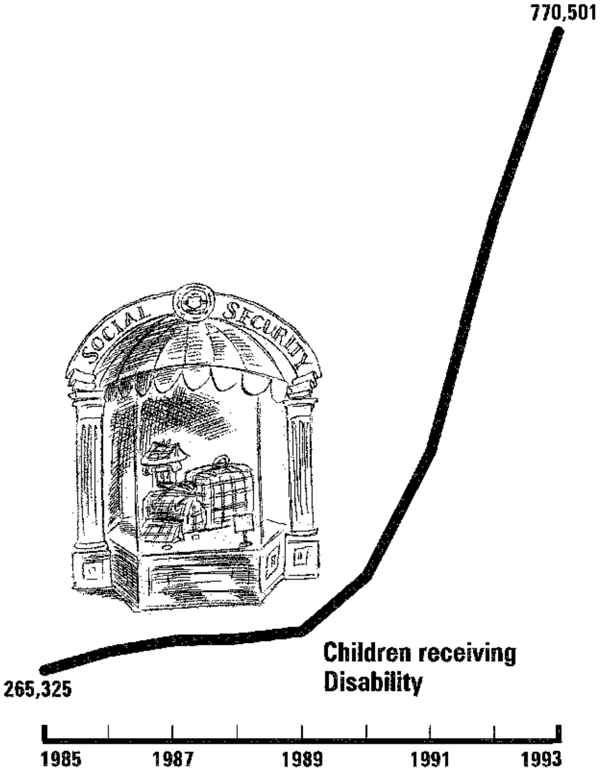
Employment within the SSA today often requires just such a nonjudgmental attitude to crime. "Claims representatives have to treat drug dealing as any other type of work and forget that it's illegal," explains Floy Newman, operations officer in Santa Ana, California. "It's not as if we're going to turn you over to the police or your parole officer because you're doing drugs." Newman had to calm one of the claims representatives working under her supervision who had learned that a claimant was working as a prostitute to support her drug habit. "But that's illegal!" the claims rep protested to Newman, visibly rattled. Newman reassured her that her job was merely to "go through the details to find out how she is meeting her expenses."

In this see-no-evil spirit, the agency recently declared that drug dealing would count as "substantial gainful activity" precluding eligibility for benefits. But the Ninth Circuit Court of Appeals ruled otherwise: it recently found that a claimant had spent so little time and exertion dealing drugs that the activity did not demonstrate the capacity to work.

The government's attitude toward personal responsibility in drug and alcohol cases is as inimical to a stable society as is its nonjudgmental view of crime. Both the agency and the courts bend over backward to find claimants incapable of controlling their drug and alcohol use. "There should be a presumption that someone can control their drinking," says Administrative Judge Arlander Keys, "but instead the presumption is the opposite."

The case law bears him out. Appellate courts routinely rebuke judges who hold that claimants can manage their drinking, even though the claimant himself may have testified that his drinking is under control. Such a position, says the judiciary, ignores the fact that the claimant has failed to control his drinking in the past. The 1984 Reform Act mandated that the agency pay greater attention to the "longitudinal history" of mental impairment claimants—meaning that, in the government's eyes, once an addict, always an addict.

The government is equally dismissive of the idea that, addiction notwithstanding, people can be expected to work. Judge Keys is in a distinct minority in the system: "I'm not convinced," he says, "that most addicts can't do simple unskilled work. Who is there that can't clean up a warehouse?" But once a claimant brings in a psychological report showing "antisocial trends" or "borderline personality disorder," an administrative judge or the agency is all but compelled to adopt the treating doctor's conclusion that the claimant cannot cope with a "work-like setting." "Even if we can show that someone lost his job for non-alcohol-related reasons," Keys says, "the doctor's position is always that it would be cruel to send him back to work."



The group of claimants that has stretched the concept of disability the farthest is not addicts, though, but children with behavioral problems. They, too, fall into the capacious "mental impairment" category. Treating a child's violent and disruptive behavior as a disability mocks the idea of individual responsibility no less than treating addiction as a mental impairment does. And both programs create almost irresistible incentives for antisocial behavior.

The question of where disability shades into a general welfare program is especially acute for children's cases. Many observers see children's disability as becoming just one more entitlement that perpetuates underclass dependency. John Wolff, the assistant principal of special education at Park West High School in Manhattan, calls children's disability the "male counterpart of AFDC." The applicants, he says, tend to be sons of second- and third-generation welfare recipients, who are using school "as a conduit to hook up to the system."

Children's disability originated in the 1972 legislation that created SSI. A little-noticed parenthesis extended eligibility to children who "suffer from any medically determinable physical or mental impairment of comparable severity." According to the *Washington Post*, the clause was inserted by a senior welfare official on a personal campaign to better the lot of the poor; the official himself is reportedly uncertain what the clause means.

Nevertheless, until 1990, the SSA had kept the growth of children's disability under control by strictly limiting eligibility to children whose conditions were either on its list of disabling childhood impairments or equivalent in severity. But in 1990, the Supreme Court ruled that this restriction was illegal, in a case called *Zebley* v. *Sullivan*. Like adults, the Court held, children whose impairments are not as severe as those on the listings are entitled to show that their disabilities impose "functional limitations" deserving of benefits. This requirement revealed the absurdity of the very concept of children's disability payments. For adults, a "functional limitation" is one that restricts the ability to work. But children are not only not expected to work to support themselves; they are legally prohibited from doing so. For them, the usual rationale for disability benefits—that they make up for lost income—doesn't apply. Nor, in general, does another rationale: that needy parents need help with their disabled children's medical expenses. In fact, Medicaid covers most medical costs for children who are both poor and disabled.

How, then, to measure the disabling consequences of an impairment? The Court held that an impairment is disabling if it limits the child's ability to engage in "age-appropriate activities." Evidence regarding the child's behavior could come from parents, teachers, and social workers.

The concept of "age-appropriate activities" is extraordinarily vague. The result, according to Savannah attorney Morton Gold: "It is almost impossible to defend [a denial of benefits] in a court of law." To make matters worse, around the same time that the Supreme Court decided

Zebley, the SSA itself added seven vague new childhood mental impairments, like attention deficit hyperactivity disorder, and it required decision makers to give more weight to the opinions of parents and social workers in evaluating childhood disability.

The results of both *Zebley* and these 1990 regulations have been spectacular. Children now account for just under 20 percent of the SSI disability rolls, receiving $4.35 billion a year in benefits. In 1993, more than 770,000 children were on disability, up from fewer than 300,000 in 1989. The rate of growth from 1992 to 1993 alone was 23.5 percent. In New York State, says Lloyd Moses, associate commissioner of disability determinations, *Zebley* has changed the entire disability program. With 500 to 600 new children's cases being added to the rolls in the state every two weeks, children are now a major part of the agency's workload.

The most important effect of *Zebley* and the 1990 regulations was to open the rolls to the vast and growing world of behavioral and learning disorders. "Under the old ways, we didn't think learning disabilities interfered with the main business of life," explains Jack Schmulowitz, chairman of the SSA's Office of Research and Statistics. Now the agency knows better. Mental impairments account for more than two-thirds of the growth in children's awards since 1990, with behavioral problems now constituting almost one-quarter of all child mental impairment cases and attention deficit disorder constituting an ever-rising portion of the total.

Two influences helped fan the rapid rise in children's cases. After *Zebley*, the agency embarked on an aggressive publicity and outreach campaign to sign up more children, sending out brochures to local welfare offices and schools. Its allowance rate for children's cases also shot up, initially to around 60 percent. For a period of six to eight months after the decision, says Abe Anolik, income maintenance program specialist for the SSA in New York State, "if you were a kid and you knew someone who sneezed, you got benefits."

Equally important has been word of mouth. "This is one that's really out on the street," says John Hoffman, a Detroit administrative judge. "It's common knowledge that you might as well try for SSI because it's not that hard to get. I've seen cases where the problems were extremely minor." Parents have threatened teachers who've refused to fill out applications for their children; mothers have called the agency trying to get their unborn children on SSI.

The parents' eagerness is understandable. The federal payment is $458 a month; 27 states also provide a supplemental payment. The money comes with no strings attached. Though the theory behind children's SSI is that it compensates for medical costs, there is no requirement that it actually be used for that purpose. According to Ann Marie Sullivan, director of the Parents and Children Together Program at Fordham-Tremont Community Mental Health Center in the Bronx, some parents simply put their children's payments "up their nose" in cocaine. A 23-year-old mother in public housing in Boston told the *Boston Globe* that her eight-year-old son, who had been put into a special needs class for punching and kicking other children, was on SSI though he "was not really disabled." "I tell him that he gets us money to help us," she said. "I just think he needs help in terms of his attitude, and we need the money."

Some of the awards for the original class of claimants in *Zebley* were as high as $75,000. A mother in Greenville, Kentucky, spent the $13,000 she got for her hyperactive son on a car, washer-dryer, refrigerator, stove, TV, three jogging suits for him, home repairs, and a $2,500 computer. Some of Ann Marie Sullivan's clients received $20,000 each at age 18 as a retroactive payment for attention deficit disorder—from which they no longer suffered, and whose treatment had been paid for by Medicaid.

Though professionals worry about the stigma that may attach to the label "disabled," the recipients seem untroubled by that possibility. Sullivan tells of a large family who came to her, each member brandishing his or her SSI check "as if this were a form of prestige." "The kids buy into it," she says, "They see it as a way of having more spending money."

Disability seems to run in certain families. A family in Arkansas with all nine kids on SSI received $3,500 a month; another family with 11 children on SSI got $4,000 a month. Income maintenance specialist Anolik tells of families in New York who are "all dysfunctional together."

As the children's caseload has risen, so too has criticism of the program. Stories abound of parents coaching their kids to misbehave in school or fail their tests. A child in Wynne, Arkansas, asked his teacher if doing well on an exam would affect his "crazy check." According to Savannah's Morton Gold, parents sometimes hold their children out of school to ensure that they will fall back several grades and thus fail the "age-appropriate" test of disability. Eighty-one percent of

One Recipient's Story

Phyllistin Woodson exemplifies the inadequacies of the current classification of drug users. Gaunt and disheveled-looking, despite her jaunty lavender jogging pants and black T-shirt, she sat restlessly in the Social Security office on 125th Street in Harlem last September, brandishing a letter from the SSA. "They're telling me I'm in jail!" she proclaimed indignantly. "Can you believe that?"

Actually, the SSA had almost gotten it right. Woodson, 32, had recently served ten months of a one- to three-year sentence for an offense she says was "related to drugs" in Beacon Women's Correctional Facility in Dutchess County. During her stay upstate, she collected $3,000 in SSI benefits, thanks to a friend in the city, she said, who had forged her signature on her checks and sent her the proceeds. (It's illegal to collect SSI while incarcerated, but inmates often find ways of circumventing the law.)

Now the SSA was seeking to recoup the illegal payments, all but $600 of which Woodson had spent upstate "catalog shopping" for sneakers, clothes, and appliances.

Woodson collects disability for AIDS, but her most immediate problem is drug use. She figures she contracted AIDS in the early eighties, when she was using intravenous drugs and leading a promiscuous sex life. At the same time, despite her heavy drug use, she worked as a secretary for the IRS and for a federal mortgage agency. She would pay a doctor $5 a hit to shoot her up so she would avoid needle marks. She quit her job in 1991 because she was no longer a "functioning addict." Because she went on disability for AIDS, she is not required to be in treatment or have her checks sent to a representative payee. Currently, she smokes crack.

As Woodson describes it, her stay in prison did wonders for her health. She gained weight, got her color back, and started "talking the talk" that when she got out she'd stay off drugs. Within a few weeks, however, she was using crack again, paid for by her federal disability checks.

Woodson's monthly disability benefits from SSI and SSDI total $652. New York City's Division of AIDS Services (DAS) pays all but $100 of her $880 monthly rent for the Camden Resident Hotel, a drug-infested SRO on West 95th Street populated by other DAS clients. But Woodson never seems to have any money. She says of her benefit checks: "That's not money! Hair—

teachers and special education counselors polled in Arkansas said that their students had been told to misbehave, and 79 percent agreed that once a child qualifies for SSI, his motivation to comply with schoolwork decreases.

"Teachers are disgusted with it," says Jeff Nussbaum, a special education music teacher at Park West High School in Manhattan. "A kid gets classified as 'emotionally disturbed': what that means is anyone's guess. He can be violent, really rotten, and he gets on the dole."

John Wolff, the assistant principal of special education at Park West, has little patience for the system: "The same kids who two days before would spit in my eye and call me [obscene names] are now applying for disability. Some of these students I've dealt with for five years. I know they could work, and now they're seeking to get something for nothing." Though Park West does not yet have a large SSI population, Wolff has seen the cases inch up in the last couple of years. Applications become more prevalent at about the time that students are leaving school. Once a child turns 21, his mother loses her eligibility for the AFDC benefits that have hitherto supported the family; so, as students start aging out of the system, Wolff says, "they start scurrying around looking for their next form of support."

Once on SSI, a child is a good candidate for staying on disability for the rest of his life. Until 1994, there was no requirement that children's cases be reviewed for continuing disability when recipients turn 18; Congress passed such a mandate in August, however. This requirement is unlikely to have much of an effect, given the backlog of disability reviews throughout the agency. Moreover, 18 years is a very long grace period. Children who got SSI as low-weight infants are still on disability as healthy four-year-olds and will likely remain on the rolls at least through their 18th year.

Like SSI for addiction and alcoholism, or indeed for every disability that could be remedied, paying benefits for behavioral problems penalizes getting better. It also sends children the wrong message about responsibility. Writing in 1993 in the *Journal of the American Medical Association*, pediatric neurologist Fred Baughman warned that the danger to children misdiagnosed with attention deficit disorder is that they "believe they have something wrong with their brains that makes it impossible for them to control themselves without using a pill." The official stamp of welfare payments can only strengthen

they didn't think of that, did they?" It costs her $100 to get her cornrows done; she also needs a good pair of boots and a nice down coat, she says, since much of her clothing was stolen by her neighbors at the Camden while she was in prison. "The churches can't give me all that," she grumbles.

During most of the month, "I sit there being really hungry," she says. But it's not her cornrows that are absorbing her income; it's her drug use. On check days, she queues up with the rest of the Camden's residents for the mailman and spends at least $100 on drugs. "I'm going to get high today," she announces, "whether it's making a blow [job] or selling my ring." She had taken the ring from a neighbor at the hotel.

Woodson has tried therapeutic communities and Narcotics Anonymous meetings to get off crack. She averages about six months in treatment, then quits. Other people she knows have come clean. Their secret? "You've got to really want to quit," she explains. "When you really want it, you can." The only time Woodson wants to quit is when she has no money and is "feeling bad." But then the next check comes, and her resolution is up in smoke. "I'm not going to use the excuse of my illness," she says, "because I was doing drugs before."

that self-destructive belief, leading, in the worst cases, to criminal behavior.

Experts increasingly agree that SSI rewards parents' destructive behavior. Philadelphia psychiatrist Kenneth R. Carroll told the *Washington Post* recently: "Many of the problems these children manifest are largely traceable to parental neglect or abuse. Behavioral and emotional problems, or conduct disorders that are directly attributable to inadequate parenting, are being called disabilities, and the parents are receiving a cash award for having achieved the problem."

For their part, welfare advocates take a laissez-faire attitude toward the possibility that SSI may be bankrolling parental misconduct. "The program is not about only giving to good parents," explains Barbara Samuels, Social Security coordinator for Legal Services for New York City. "You can't legislate against parents who are irresponsible."

Congress established a commission in August to explore whether cash payments are the best response to children's disability and whether the provision of retroactive benefits should be changed. Yet the growing doubts about children's disability have not daunted either the SSA's or local governments' enthusiasm for the program. Since 1990, SSA has funded ten major outreach efforts for children. Local welfare offices actively promote SSI: parents don't receive AFDC for their children who are on SSI; and since states and localities bear some of the costs of AFDC, getting clients onto disability shifts welfare costs to the federal government. For the last two years, the New York City Board of Education and the Human Resources Administration have cooperated on a joint project to get every special education student receiving welfare onto SSI.

Federal disability continues to play a vital role in supporting people with serious maladies. But its ability to do so is threatened by the overextension of the concept of disability. The House Republican welfare reform plan proposes an overall cap on SSI expenditures, which could reduce or deny benefits for the truly disabled, as well as the elderly and the blind. Better to cut the rolls by adopting a more reasonable definition of disability.

The preamble to the Americans with Disabilities Act claims that 43 million Americans are disabled—an implausibly large number. By contrast, the National Institute on Disability and Rehabilitation Research estimated in 1991 that 3.1 million Americans need assistance with basic activities like bathing and dressing, while 3.9 million need help with things like shopping and cleaning. As John Kiernan of the International Center for the Disabled points out, "The definition of disability depends on where you're coming from and what you want the numbers to do for you."

Numerous other problems afflict the disability program. First, the agency makes too little effort to rehabilitate its clients; in 1993 it spent just $68 million on rehabilitation, and only one in 500 SSDI recipients returned to work via vocational rehabilitation. Second, the program contains serious work disincentives for low wage-earners, since SSDI replaces a high proportion of their former wages. Third, there is a critical need to revisit the listings of physical and mental impairments to see if they really measure the total inability to work. In fact, many people whose impairments the agency would deem disabling are working. Finally, some commentators suggest taking SSI out of the jurisdiction of the Social Secruity Administration entirely, since its clientele differs so significantly from the traditional Social Security recipient.

But the greatest burden on the agency arises from its having collapsed the categories of social dysfunction and disability. "We don't talk about responsibility anymore," argues Chicago's Judge Ahlgren. "I haven't heard anyone say: 'You've made decisions which are responsible for your condition.'" By awarding benefits for self-destructive behavior, and by treating as a disability what ought to lie within someone's will to control, we have created yet another set of incentives for failure. ●

Empire State Perestroika

William J. Stern

Governor Pataki has a glittering opportunity to restore New York State's fast-fading economic vitality. But to seize it, he must de-invent government, not re-invent it.

The Pataki administration has an opportunity to transform radically the way state and local government works in New York. It must seize this opportunity, for the economy of New York can no longer support the vast government we have created. We need to restructure government completely, not only by examining each program to identify waste and inefficiency, but—more important—by questioning, rethinking, and redefining what the state government's role should be, even in popular areas like education. The state needs true restructuring: *perestroika*, not incremental reform. The government is going to have to get out of some of the businesses it's in; we need to de-invent, not just re-invent.

We need to cut huge sums from the state budget—the bulk of which already goes out to localities—and give the local governments more authority over their own affairs. Smaller state government should lead to smaller local government as well: restructuring at the state level can serve as a model for localities. And the dramatic changes in Washington will be the engine that can force significant change here.

Political leaders have reacted to fiscal crises in the past by refinancing debt, using one-shot gimmickry, and making small cutbacks across the board. There were changes in emphasis, with maybe the police department getting cut last, but there's been no real governmental revolution. Today we need a more radical agenda.

The first step is truly to restructure the state authorities, which are out-of-control engines of borrowing. They create huge amounts of debt for the state without going through the normal procedure of gaining voter approval. I would begin, dramatically, with the Port Authority, which would be a good place to start because it actually takes in a lot of revenue. Also, the State of New Jersey is half owner, and we have reason to think its governor would be willing to experiment. We could begin a significant privatization at the Port Authority and then start to move on to the other authorities—Battery Park City, the convention center,

Photographs by William Clift

the Urban Development Corporation, the Dormitory Authority.

In each case, the new administration would examine why the authority was created, where it is now, and whether it is still needed. But the administration would also get a handle on the debt-floating that these authorities have effected. That debt always winds up back in the general fund, as interest payments, and soon nobody even remembers where it came from anymore. While the Javits Convention Center is supposedly generating revenue, taxpayers are paying off the Triborough Bridge and Tunnel Authority bonds that built the center. Just producing a true accounting of the authorities' finances would be a significant reform.

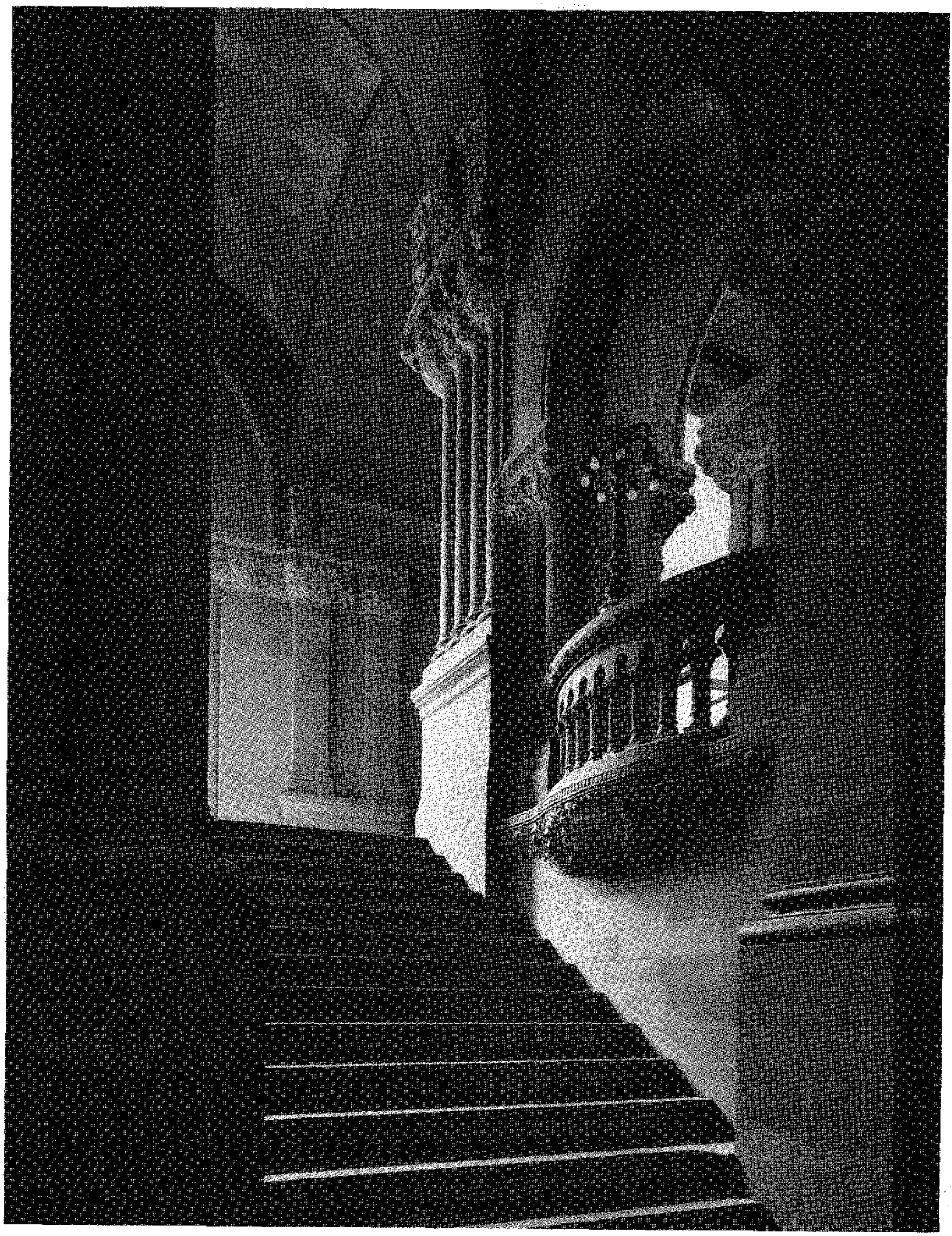
Bond covenants may restrict what the administration can do. But by moving against the state authorities, Governor Pataki would at least limit the creation of future debt and do away with a lot of political patronage—both worker and vendor patronage. One of my favorite examples is the United Nations Development Authority, which, last time I looked, managed two luxury buildings on the east side of Manhattan. It exists for no reason other than to create business for politically connected vendors.

The Urban Development Corporation, which I ran from 1983 to 1985, was formed to build low-income housing after the riots of the late sixties. It has the power to override zoning ordinances and condemn property, and it is exempt from local property taxes and building inspections. It practically bankrupted the state and helped precipitate the fiscal crisis of 1975. Then it got into subsidizing developers. Today it's a huge patronage mill, with fortunes being made, and nobody knows who's really running things. There are organized crime figures roaming around. When I first got to the UDC, I thought my mother would be proud of me. But my second meeting there was with a pair of pretty well-known mob figures.

The authority structure has created welfare-state multi-millionaires. It would be a great place for Pataki to start applying a little *perestroika*. It would produce exposés that would keep the media happy. It would provide an example of privatization—and it would also give the new administration the credibility it will need when it turns to more controversial cuts in spending, from Medicare to welfare to education.

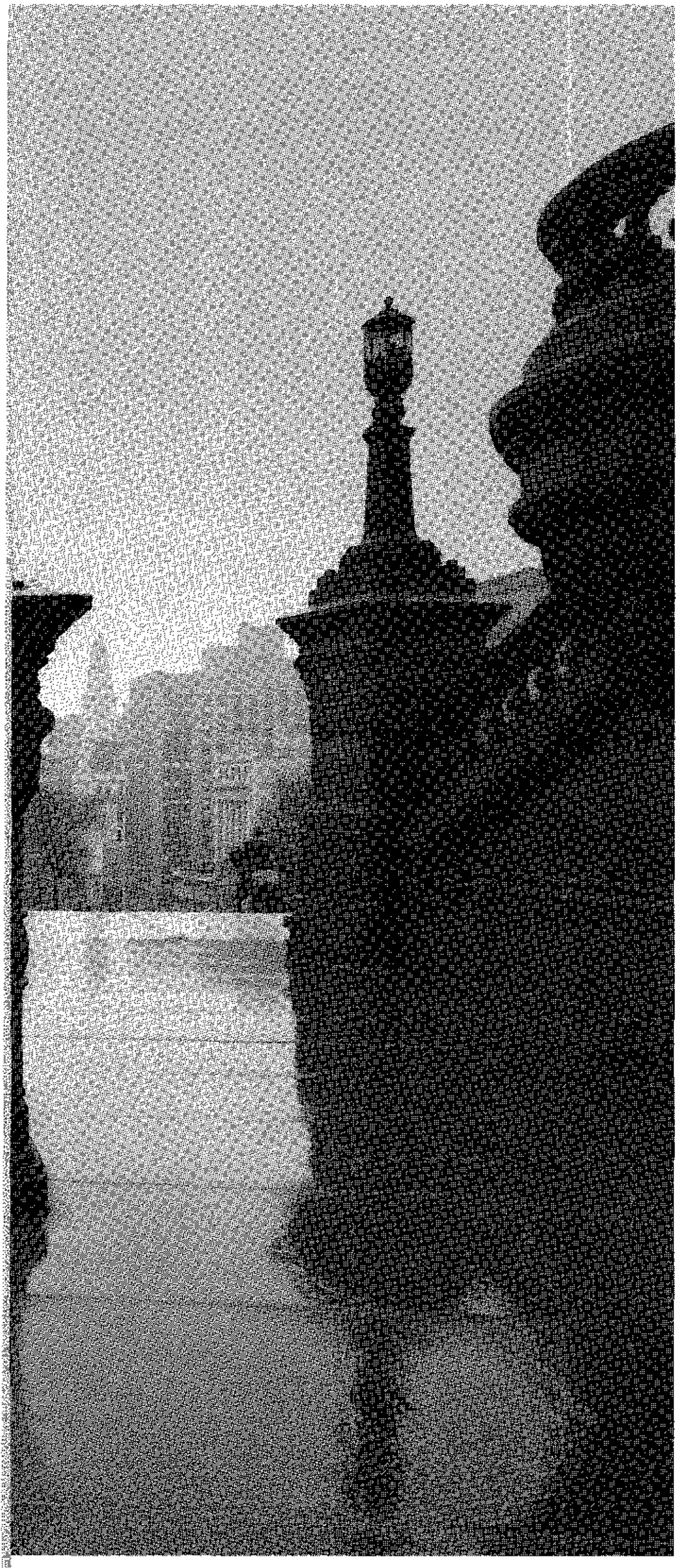
What about the agencies of the state government itself? Many could be eliminated outright, like the Consumer Protection Board, which exists even though the cities and counties have their own consumer protection agencies. Other agencies could be downsized, such as the housing authorities. The social welfare agencies could be restructured and minimized, with the idea of turning their responsibilities back to the localities. Many need overhauls. The procurement procedure of the Department of Transportation has turned out to be one of the great rackets of all time. Nowhere does it cost more to build or repair a road or bridge than in New York. It's something like 150 percent higher than anywhere else. The Department of Transportation would be an excellent place to experiment with privatization, by letting private contracts to maintain, repair, and improve the infrastructure.

The administration should move to freeze Medicaid spending. It is the single biggest item in terms of growth—the monster that's eating the state budget. You can't let health spending continue to grow 8 or 9 percent per year, way above the inflation rate, and expect to control state spending. I don't see any other way to deal with Medicaid than to acknowledge that we can't afford this growth. We need to put a cap on spending and work down from there. If you try to revolutionize the way medicine is delivered in the state, you're really left with waiting for change on the national level and dealing with details in which you have no expertise. If you go at it through incremental reform, you're going to fight every battle hedgerow to hedgerow, like the infantry in World War II. Many experts recommend that New York move aggressively into managed care, as Michigan and California have done with good results. Only a spending cap would force such reforms.



The Great Staircase, New York State Capitol: leading to reform?

Looking east from the Capitol, where business as usual has gone on far too long.



The Pataki administration has to confront the question of education spending, but it had better be careful. The state university system is as untouchable in New York politics as Social Security is in national politics. It is enormously costly, and the families who take advantage of it make more on average than those whose children go to private colleges. Should the state provide higher education to anyone? Or should you either go and pay your share or, if you can't afford that, go to night school? I'm fairly radical about that—I don't see what's wrong with parents' scrimping and saving to send their kids to school.

There are many things short of this that we could do in education—elementary and secondary as well as college—but they require tackling the most powerful special interest in New York: the education industry. Teachers' unions and associations are big campaign contributors. They are close to both parties in the Legislature—probably closest to the Senate Republicans. They supply full-service political operations—phone banks, advertising, management expertise—for candidates. The teachers are really out there doing work.

And plenty of people have made money out of education: all the vendors to the Dormitory Authority or the new School Construction Authority, the people who do everything from building schools to selling pencils. Because the politics are so perilous, it makes sense to postpone action on restructuring education until farther down the road. But ultimately, action must come.

The kind of restructuring that's needed faces huge obstacles. There are a lot of people who have very strong vested interests, ranging from millionaires who made their fortunes by manipulating the welfare state, to people who have the soap contract at the prisons, to government unions. These are very powerful forces, and they will fight any kind of meaningful change. You're always stepping on a toe. Even privatization has risks: the *nomenklatura*, the insiders who benefit from our oversized government, could easily wind up controlling the private organizations

Governor Pataki's Opportunity

For the first time in 70 years, New York State has a governor who is not beholden to the welfare-state organizations in New York City. This suggests that the dynamics of Albany will change, and here's how.

If Pataki uses the line-item veto to cut spending, he has enough votes—even in the Democrat-controlled Assembly—to sustain his vetoes. Upstate Democrats are very nervous about high spending; they face tremendous pressure from their constituents to reduce the cost of government.

People upstate say: in our region, we have the most efficient, most productive manufacturing workers in the world—and we're losing jobs. How come? It's because of the cost structure imposed on us by New York City in the Assembly. The first thing Democrats were asked in the campaign upstate was where they stood on social spending and the tax burden. That's a tremendous wedge for Pataki to use to break Albany's two-headed version of the one-party state, the duopoly. If he gets some upstate Democrats to support him for spending cuts, he can change the whole dynamic of how business is done in Albany.

It will be very hard for the Democrats to oppose restructuring. They no longer have a party patronage mechanism in New York State. They have lost the mayoralty, the governorship, and the power of the congressional barons. Fifty-five of the 57 counties outside New York City now have Republican county executives, because voters were outraged by state mandates imposing costs that localities just can't carry.

If Governor Pataki has the will to make fundamental changes, he will have the opportunity, since the coherent organization that once would have opposed him no longer exists. *—Fred Siegel*

supposedly taking over from the government.

We also have a huge constituency of welfare recipients, and some of them are truly sad. They are also an impediment to change. We have a huge population of the truly lost, of people who can't function, who can't or don't want to work. A lot of these people are shipwrecked, and there is nothing to do but feed them, house them, and pray for them. New diseases afflict them, new plagues like AIDS, and behaviorally caused problems that are getting worse. We have a growing prison population. All these social pathologies are an impediment to change.

I don't see anything government can do about social welfare other than to put a cap on how much it spends, because it's counterproductive to destroy the whole state's economy trying to fix these problems. Government can try to reform or re-invent what remains—but that has never worked. The problem here is that no one has ever successfully dealt with social behavior by material means anywhere in the world. The culture is not yet ready to accept that there are things about our entire society that are creating socially destructive behavior by a large number of people of all economic classes. Ultimately, we need to rethink the de-spiritualization of the culture, the entire twentieth-century view of life. I'm not optimistic that we will do so soon.

The most dramatic, complete impediment to change is the State Legislature. It is the worst governmental institution of the Western world. It has more employees than California's Legislature, even though California's population is half again as big as New York's. It is filled with conflicts of interest. Members are allowed to practice law on matters that come before the committees that they sit on. There has been no post-Watergate ethics reform of the New York State Legislature. Many other legislatures have instituted reforms—including the U.S. Congress—but New York has a completely unreconstructed Legislature, presiding over a blown-up welfare state.

There's so much money swinging around in the Legislature that criticizing it is almost like throwing money on the street and condemning the people who pick it up for not being honest. It's an undemocratic body, in which a few people have enormous power. Citizens can't find out how members voted or how matters are progressing through the committees.

Election outcomes are gerrymandered. In New York City, there were 25 State Senate elections. In five, candidates ran unopposed; in ten, the victor got 90 percent or more of the vote; in five others, the victor got 80 percent or better. The Legislature blatantly allocates taxpayer monies for campaigns. The only way to get at this would be to have an election where the Legislature became an issue. This year, no one in either party said a word about it. Nobody knows who these people are, up there in Albany.

In the same way that Newt Gingrich nationalized the 1994 congressional election, you need someone who could "state-ize" New York's legislative elections. The voters need to find out that it's not whether Johnny Jones is better than Joan Smith in Suffolk County that counts, but whether they're pulling a lever for reform.

The media in New York are another impediment to change. There's really no coverage at all in Albany. Few reporters go up to Albany, few want to go, and when they do go, the idea is to get along.

What has to happen for significant change really to take place in New York? First, consider what actually happened in the election. The candidates didn't present any kind of vision. Pataki ran as Anyone But Cuomo. He has a mandate for cutting taxes, but not an elaborate mandate for true and total top-to-bottom government reform.

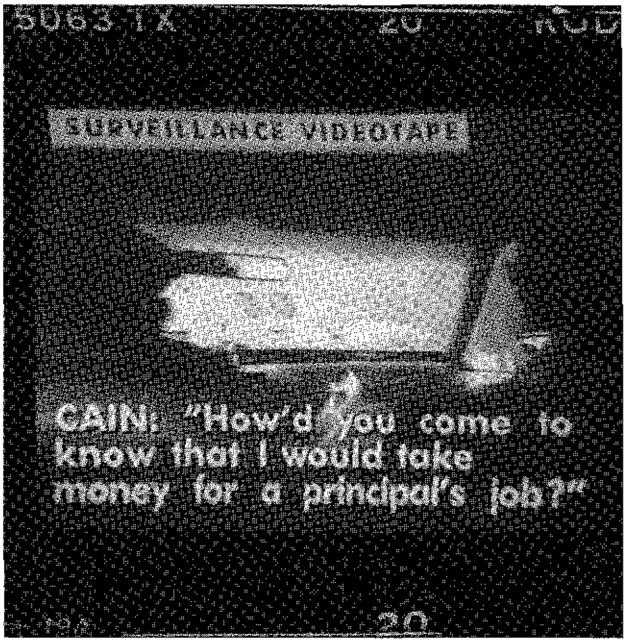
But I think we're lucking out a bit, because a lot is happening nationally that will have tremendous repercussions for the state. Visualize a flat tax at the national level, eliminating deductibility of state and local taxes. Imagine block grants, rather than specified grants, allowing tremendous competition in the way states provide services. These are real possibilities in Congress now, and you can go on and on. Eliminating deductibility of state and local taxes would be an act of reform for the states because deductibility amounts to a subsidy for our huge state government.

What's happening in Washington is possibly very dramatic. When innovative Republican governors talk with newly elected Republican congressmen, there's a real sense of possibilities. People are talking about legislation or a constitutional amendment restricting the power of federal judges over state policies. They are talking about just sending a check to the states and letting the states have full control over welfare, education, and other programs. They're proposing radical things in Washington; if even one-tenth of them get through, it will have a big impact.

Assuming dramatic change from Washington, and assuming that Governor Pataki goes ahead and cuts taxes—the only way to control spending—he has to be careful not to be misled by events and sidetracked. When Cuomo took over in 1983, he thought there was a recession on. It had actually just ended, but nobody knew yet. Partly because of that, he didn't continue the Carey policy of cutting taxes. Because he thought there was a recession, he thought he faced a budget gap. It turned out the economy recovered quite significantly, the financial services industry boomed, and revenues came swelling into state and city government. They spent it all and exploded the size of government, proving that, in the real world, if the money is available, government will spend it. Cutting taxes to limit the money available is key—but the new administration must do much more. ■

Who Really Runs the Schools?

The dirty secret of many community school boards is that they are political patronage enterprises more than educational ones. The victims, as always, are New York's children.



CAIN: "How'd you come to know that I would take money for a principal's job?"

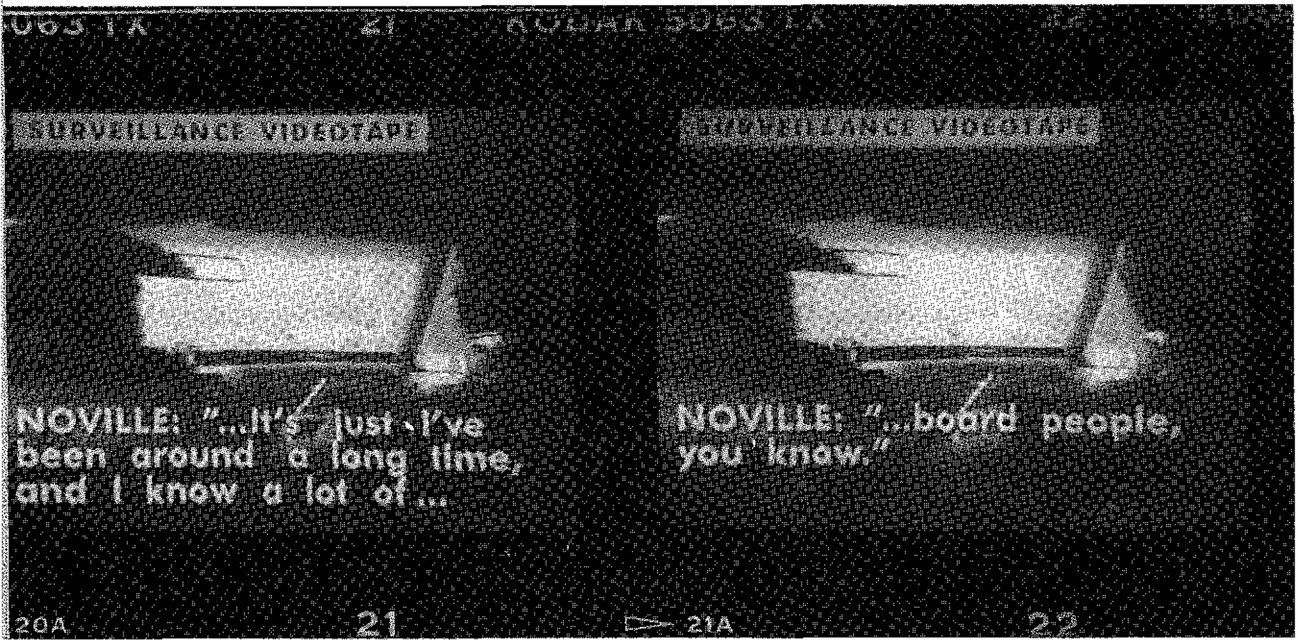
Lydia Segal

On March 23, 1993, Virginia Noville sat with Ed Cain, a Community School Board 12 member, in his Cadillac Coupe De Ville on Houston Street and methodically counted out $2,000. She laughed as she handed him this second installment on an $8,000 to $10,000 bribe—depending on what Cain would "need to work with"—to buy her the principalship at Community School 214 in his South Bronx district. "I told my friend back there I was giving you the résumé for the job," she quipped.

The joke was on her. Without her knowledge, Cain was recording and videotaping their conversations for Edward Stancik, the Special Commissioner of Investigation for the New York City School District, whose office was established in 1990 in the wake of a series of scandals similar to this bribe.

A principal in Brooklyn's District 19 until she was forced to resign in 1989 for misconduct, Noville first began to think of approaching Cain during the job interview for her next post, as a consultant in District 12's Community School 214. During that interview, she thought she discerned an unspoken message, when Superintendent Alfredo Mathew Jr. (who later committed suicide

Photographs by Chistopher Hornsby


SURVEILLANCE VIDEOTAPE
NOVILLE: "...It's just, I've been around a long time, and I know a lot of...
SURVEILLANCE VIDEOTAPE
NOVILLE: "...board people, you know."
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while under investigation for theft, money laundering, and payoffs to politicians) dialed Cain's office and introduced her to him over the phone. "The way I read that," she reminisced to Cain, as she counted out the hundreds, "was that you . . . would kind of become my godfather in the district." Asked how she knew to offer him money, Noville sighed: "Look . . . nobody said it. But you know, . . . I've been around a long time, and I know a lot of board people . . . across the city."

That Noville's perception of the system is accurate is dismayingly clear from over a decade's worth of investigations—of which the Special Commissioner's is the most recent—that provide a riveting insider's view of how corruption distorts education in the majority of our local districts, affluent ones as well as poor ones. Kickbacks, bid rigging, theft, fraud, embezzlement, and extortion in almost every school function, from hiring to asbestos removal to leasing—all these figure prominently in the investigative record.

But worse than all this, the investigations disclose a more insidious class of corruption: the conversion of the whole community school board system in many districts into a machine for political patronage and campaigning. As District 27 board member James Sullivan put it in a secretly recorded conversation for another investigation (by the Gill Commission, established in 1988): "I'm a political leader—that's why I'm here. . . . I make sure my people get jobs."

While offenses like bid rigging harm pupils by diverting resources away from education, the transformation of school districts into political patronage operations shortchanges children most, because it distorts so many parts of the system rather than just a single corner of it. For instance, community boards that pad schools with patronage employees siphon away precious classroom resources to swell administrative bloat. The waste can be huge: as the Gill Commission estimated, District 27 in Queens squandered over $1 million on patronage. And it is harmful: school districts ranking lowest in math and reading scores spend least on teachers and most on administrators and bureaucrats.

Patronage debases the quality of the educational effort by making merit irrelevant to hiring and promotion. Not surprisingly, the most politicized districts rank among the lowest in citywide test scores. In this climate, instead of spending time developing creative lesson plans, teachers feel pressured to politick. Many dedicated, well-qualified educators, seeing that political work rather than schoolwork is the key to advancement, become disillusioned and demoralized, and finally leave the system.

When city schools decentralized in 1969, and 31 community school boards (now 32) took charge of 850 elementary and junior high schools, the idea was to turn control over to concerned citizens to encourage grassroots participation in educational policy. Nine-member boards, autonomous from the central Board of Education, were to control district policy, budgets ranging from $80 million to $125 million per district, and hundreds of district jobs, ranging from supervisors (principals and assistant principals) to non-pedagogical staff, like $12,000- to $15,000-a-year paraprofessionals who assist teachers in class and $8,000-a-year school aides who monitor halls and lunchrooms. Teachers, because they are not hired locally, are outside board patronage. But boards do control teachers' promotions and perks, ranging from lucrative overtime and summer jobs to educational conferences.

Though demands for minority jobs and control fueled decentralization, few predicted the degree to which the power it afforded would be used to convert some districts into fiefdoms ripe for plunder, where jobs are sold for cash, awarded as patronage plums to loyal campaign workers, and disbursed to friends and relatives.

Noville's mobster slang in telling Cain she hoped he would become her "godfather" opens a window on the systemic corruption that emerged. In District 12, the terms "godfather" and "godmother" denote board members who obtain jobs for people, referred to as their "pieces." Pieces always earn their positions by objectionable means—nepotism or sexual favors, for example—but the most usual way is by doing political work for board members. "The way you get elected," Cain said about board members, is "you get people jobs and stuff like that. Come election time, you ask people to look out for you."

It may sound like circular reasoning to get elected to get people jobs and then get people jobs to get elected. Why bother to step on what seems a treadmill—and for a stipend of $125 a month? But in fact, the benefits of community school board membership can be manifold and tangible. Board members travel to educational conferences at taxpayers' expense—sometimes to conferences in Honolulu and St. Thomas. Board members can put their family members in school jobs with a two-thirds majority board vote from which they do not need to abstain. District 12 board members simply agreed to rubber-stamp each other's relatives for jobs and not to interfere with their perks once hired. "You know the rule we have," District 12 board member Kenneth Drummond angrily complained to Cain, when an official questioned Mrs. Drummond's failure to get approval before taking a leave of absence. "We don't mess with family."

Legal perks can shade into illegal profiteering, such as receiving bribes and pocketing leftover campaign funds, a reportedly common but infrequently punished offense. Board members have on rare occasions taken kickbacks, too—$50,000 from textbook publishers, in one example, or cash, meals, and a white cashmere coat from stationery suppliers, in another.

In some districts, especially where jobs are scarce, boards also bestow glamor, status, the seductive scent of power. Cain said he ran for the board for "the power and the women." Indeed, boards are sometimes used to get jobs for lovers.

Added to these reasons for seeking a board seat is one that in many cases is the most important: a community school board seat makes a fine launching pad for higher political office. Board members can mobilize their district's enormous captive school workforce for political campaigns, whether for school board re-election or for higher office. Board members can run for higher office repeatedly because, with the school machinery, it costs them so little. Many succeed.

Some board members seek election because of public-spiritedness and a concern for children, but more self-interested objectives impel many others to build patronage empires to ensure their continuance in power. The following dramatic examples from recent investigations disclose how they do so. The examples also suggest that while the individual school officials involved are of course responsible for their acts, the system itself—with its vast, unsupervised district powers, multiple incentives and opportunities for patronage, and negligible sanctions for wrongdoing—makes corruption not just possible but likely.

What's more, these examples make clear that absorption in the patronage game isn't just a superficial stain on the educational enterprise but penetrates to its heart, harming children. As one District 27 board member joked in a secretly recorded 1989 conversation, "I've never heard the word 'children' or 'education' enter into our discussions in the last few years—with anybody." In the hundreds of tapes I listened to during the Special Commissioner's 16-month District 12 investigation, I too almost never heard talk about children or education—except once, as a mask to cover up politicking, when Kenneth Drummond warned Cain how to "deal" with Robert Henry, the new acting superintendent who replaced Alfredo Mathew after his suicide: "You gotta try to keep everything up on the educational feel, okay? . . . Al [Mathew] . . . was a cutthroat, and cutthroats usually don't tell on each other. . . . [But] Robert could be working for the CIA for all you know. That's where you gotta be very, very careful."

Schools are treasure-houses of every resource political campaigns need: office space, equipment, and staff. And board members don't have to pay a nickel for any of it. They can use school staff and community residents as campaign troops, rewarding them with jobs and perks paid for by the board. And they use the schools' office space and equipment, gratis.

When District 12 board member Lucy Cruz set her sights on the City Council for 1991, she had her pieces and aspiring pieces run most of her campaign: working at her telephone bank, selling fund-raiser tickets, chauffeuring her around, getting out the vote. As the election approached, Cruz gave several of her pieces the keys to her Bronx house so they could spend the night there when they worked too late to go home. One assistant principal spent 30 campaign nights there. Cruz won the election and rewarded him and many other supporters with school jobs.

"I've never heard the word 'children' or 'education' enter into our discussions in the last few years—with anybody."

Another assistant principal, Carmen Sonia Colon, who worked hard at Cruz's phone bank and stood on street corners with her 16-year-old daughter distributing fliers, made clear her motivation. "My chances [for advancement] would have been more by working, not only for Lucy Cruz's campaign but for any politician." Cruz rewarded Colon with an interim acting principalship, undeterred by the fact that Colon, in Cruz's opinion, was "an eyesore" with "hygiene" problems. Colon was eventually transferred and demoted to assistant principal after parent protests.

Board members bind educational officials to their campaigns by an unambiguous system of rewards and punishments. When Kenneth Drummond, who had been removed from the District 12 board in 1989 for not living in the district, was plotting his 1993 re-election campaign after establishing a phony address within district borders, he laid out precisely what aspiring assistant principal James Gelbman would have to do to earn a promotion. "All you gotta do, is do what you gotta do, and you're in. . . . You gotta get the 100 votes," he insists to Gelbman, who was wearing a hidden recording device as part of the special commissioner's investigation.

In return, Drummond promises Gelbman his pick of positions when the new board takes over on July 1, 1993: "You just name it. . . . I mean, you've got to be the first person to be put on the table. And everything is up in the air: deputy, principal, superintendent, whatever you want to call them—director of programs. . . . Jim [Gelbman] has gotta be standing there with all the medals, . . . because he paid his dues." Drummond won the seat but was convicted of forging nominating petitions and removed from the board once again.

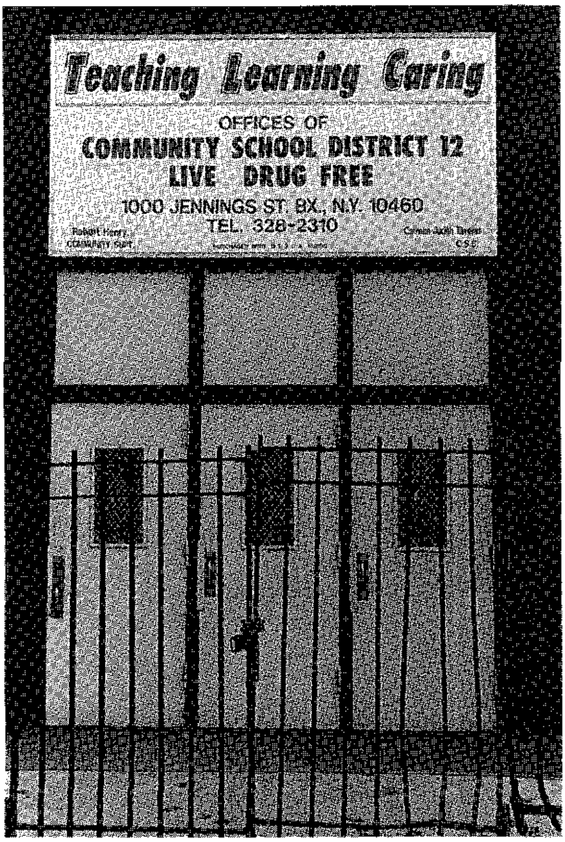
No less frank are the punishments board members use to keep school troops loyal, especially those who have already obtained promotions. Drummond explains to Gelbman: "Just like you can get up, you can come back down. . . . I mean, a principal be out there, minding his business, trying to do a good job. But if a superintendent—or his deputy who's in charge of principals—is not supportive of you, you know, hey, you don't get textbooks, you don't get little grants, . . . or you don't get your conferences, your seminars. You know all the little things that can be done to principals. Your life can be made very, very miserable." Cain confirms that educators whom board members recommend for jobs well understand this quid pro quo. "They know that down the line . . . they gotta get out there and do some [political] work," he says. "They gotta do something, because, if not, they gonna go down—they gonna lose their job."

Non-pedagogical jobs provide boards with easy currency to pay community residents for political work. The majority of these positions, which number over 600 in some districts, carry few educational requirements and involve no standardized test. The flexible budgets of many state- and federal-funded programs allow jobs to be invented as needed. Thus, when one District 27 board member wanted a cushy post for his campaign manager, and another wanted a job for his wife, they instructed the superintendent, who was wearing a wire, to create a $75,000 "satellite" office from the district's budget. To finance hundreds of thousands of dollars for paraprofessional patronage jobs, they told him to use money earmarked for "reimbursable programs." For such purposes, many districts place multiple assistant principals at one school, a wasteful practice criticized most recently by Chancellor Ramon Cortines.

Schools provide access not just to individual, disconnected workers but to a vast, hierarchically organized workforce that can be easily mobilized for a broad range of campaign tasks. Board members convey their wishes to principals and assistant principals, who in turn mobilize large numbers of their subordinates and parents. And Parent-Teacher Associations provide school staff with automatic access to a very large voter base.

A textbook example of a school machine at work is board member Sheldon Plotnick's 1993 City Council campaign, recently examined by the special commissioner. When Plotnick tried to catapult himself to the City Council from his seat on Brooklyn's District 21 board, he used schools at every turn. To wrench control of the local Democratic club, he had supervisors in the district orchestrate a massive club membership drive. At PS 100 in the Brighton Beach section of District 21, for example, Plotnick conveyed his political aspirations to Stuart Possner, the principal, who sent trusted subordinates to recruit the rest of his staff to join the club. Within a month, most had signed up. On the day of the vote, Possner's loyalists herded staff to the club en masse after school, giving Plotnick a big victory. Faculty who did not attend were punished by being deprived of valued "preparation time."

A month later, when the club was to vote to endorse candidates for City Council, a sheet reading "Are You Going?" followed by staff members' names went round the school. The previous month's punishments understood, virtually the entire staff attended the club meeting. Several school employees testified that they did not know why they were there. With staff from different district schools sitting together, some teachers simply copied each other's ballots; oth-



ers consulted palm cards. The result was a resounding endorsement for Plotnick. Though he lost the election, he would not have gotten as far as he did without the school machinery.

A detailed, insider's view of how easily schools can be converted into campaign fund-raising operations is provided by a 1991 fund-raiser sponsored by Cain's faction, the "A Team," made up of Cain, Drummond (its leader), and his girlfriend. Cain (who died suddenly in October 1994) recalled to investigators how Drummond first laid bare the A Team's plans. "We have a fund-raiser," Cain recalled Drummond saying. "We should, you know, get a lot of people, and we pay our expenses and still have some money for your pockets. . . . As soon as the party's over, count up the money and, uh, split it."

Implementing his plan was easy. The A Team enlisted its soldiers, to whom it had given jobs at various sites around the district. A worker in the district printing office printed tickets on school stationery. Supervisors sold quotas of tickets. A secretary in the district office distributed packets of tickets to them, collected money, and kept track of who bought and who sold. Others collected money at the door and kept an attendance list.

To maximize profits, the A Team seized an opportunity provided by an early retirement incentive offered to supervisors citywide in 1991. Those opting for retirement would be replaced by interim acting principals and assistant principals selected by the board pending the official hiring process. Drummond timed the fund-raiser for the period when the newly assigned interim acting supervisors would be in the middle of the official hiring process and would be especially "anxious" for board support. "They would show up and work—they wanted to get that appointment," Cain chuckled. To top off the pressure, the A Team held the fund-raiser in their honor.

The strategy worked. The interim acting supervisors sold their quotas of tickets—or bought the unsold leftovers themselves. As one struggling assistant principal who had been unable to sell more than half his quota said: "Whether I sold any or not, he [Drummond] was gonna get his money. There was no way that I could ever expect anything if I did not sell those tickets."

The living texture of the educators' demoralizing plight comes through in the resigned, secretly recorded response of District 12 principal Althea Serrant to a recent request by Cain that she sell fund-raiser tickets: "I go to this. I go to that. I couldn't afford the one they had in January, but . . . and I mean I try to bring my friends with me, you know. So *just* give me a *few* tickets, and I will sell my tickets."

The turnout was enormous. "You know you have to go, because you knew they took attendance—if not on paper, then in their heads," one assistant principal remarked. "They have a list of names."

When the school elections were postponed to the following year, the A Team split the entire proceeds. Though estimated to be between $6,500 and $10,000, the total—mostly in cash—cannot be precisely calculated. More recent investigations show that board members' use of schools to raise funds is ongoing.

Once patronage sets into a district, board members do not need to twist arms for political support. The pressure on educators to politick becomes self-generating. Everywhere they look, they see that those who campaign get ahead, regardless of merit, while those who do not, lag behind or are punished. In District 12, for instance, Ira Victor, who campaigned hard for Lucy Cruz for State Assembly in 1988, school board in 1989, and City Council in 1991, saw his career skyrocket in tandem with his political work. In the space of three years, he was promoted from interim acting assistant principal to assistant principal to interim acting principal. That Victor had little experience as an assistant principal caused Cruz no concern. On the other hand, Louis Corominas, another District 12 educator who had once worked hard for Cruz's campaigns, slacked off on her 1991 City Council campaign after becoming "disillusioned" with her candidacy. Corominas, who had been slated to become principal at the district's most desirable school, was shunted off to a smaller school, while the best school went to Victor.

Everywhere they look, educators see that those who campaign get ahead, regardless of merit; those who do not, lag behind or are punished.

Board members take advantage of this pressure to have employees perform not only political tasks but personal errands as well. Lucy Cruz had aspiring professionals put up her chandelier, plant her flowers, do the wiring in her house, and chauffeur her around. When questioned about whether she had ever asked employees to perform these tasks, Cruz replied that her subordinates "volunteered." "They fell in love with Lucy Cruz," she explained. "It happens."

One of those Cruz frequently called on for his handiness around the house was assistant principal James Gelbman. Although he always responded, he resented it. "I really didn't want to be there," he said. "I had to do the job for Lucy because Lucy wanted it done. I had no choice. . . . What was I gonna say? 'No'?"

Gelbman reached his limit when Cruz woke him up one summer Sunday morning in 1990 to ask him to install her pool in her upstate home. "I just couldn't do it anymore. . . . I got tired of being demeaned." Gelbman did not put up Cruz's pool and did not work on her City Council campaign the following summer, "arrogantly" believing that he would be appointed principal at his school because he had the parents' support. The job went to one of Cruz's staunchest supporters. When Gelbman later asked Cruz's ally on the board why he had not been promoted, he was curtly told, "We missed you"—from the City Council campaign.

To ensure their domination over hiring, it's crucial for board members to co-opt the district superintendent. As the educator responsible for managing the district, he can try to hold up the appointment of inadequate candidates and interfere with schemes to allocate patronage.

Hired by the board on a contract renewable at its discretion, he is vulnerable to coercion. The Gill Commission's 1989 investigation in District 27 in Queens shows just how the coercion comes to bear, thanks to the cooperation of superintendent Colman Genn. A 30-year veteran of the system and now a fellow of the Center for Educational Innovation at the Manhattan Institute, publisher of *City Journal*, Genn was outraged by the district's unabashed patronage and volunteered to tape conversations with some of its worst offenders.

His first meeting began ominously: "I'm getting chopped up," one board member growls about the way his patronage job demands were being ignored. "I come up with, you know, a big fat zero." Unless Genn is a "good boy," the board member warns, his career will be short-lived. Two other board members subjected Genn to further threats and patronage demands. "You want me to tell you something honestly, Cole?" one of them asks. "Further on down the line . . . a year from now, your contract is going to be up. . . . Do you understand what the considerations become then?" Finally, the three board members, who head a six-member board coalition, promise to extend Genn's contract for one year, provided he lets them control district hiring. Genn, to help the Gill Commission, played along.

The formation of a "coalition" or "caucus" by a majority of board members is a common tactic for controlling the superintendent. A caucus convenes secretly before public meetings—in violation of open-meeting laws—to allocate patronage and decide how to vote. The board minority, which often contains the board's well-intentioned members, is excluded. With a guaranteed majority, a caucus's threats against a superintendent become credible.

Threats to a superintendent's contract are frequent and not to be taken lightly. A 1990 grand jury found that, when Brooklyn's District 32 superintendent suggested establishing nonpartisan hiring criteria for non-pedagogical personnel, his board voted not to renew his contract. What's more, a superintendent cannot count on the chancellor for job security if the board wants him out, as evidenced by Chancellor Cortines's recent failed attempts to renew the contract of a District 9 superintendent who had increased math and reading scores through extensive educational reforms in a district beleaguered by corruption and poor academic performance.

Once boards usurp their superintendents' professional independence, it becomes a simple matter to institutionalize patronage. The Brooklyn grand jury revealed that the District 32 board had established a system whereby its recommended candidates would be automatically hired as soon as vacancies arose. Applicants without board referrals were told that no jobs were available. Several years after District 32's system was exposed, District 12 adopted a more investigator-proof mechanism. Applicants without sponsors were handed a one-page preliminary application instead of the full application — "just in case," an official explained, the applicant was "an investigator." Candidates with referrals, on the other hand, were handed complete applications and got help in filling them out.

With non-pedagogical hiring, corrupt boards can drop even the pretense of merit. When Colman Genn questioned the qualifications of one board member's candidate, his concerns were bluntly dismissed: "'Unqualified?' 'Qualified?' Bullshit! That's my recommendation." The board's hiring standards for staff to work with children with special needs were hardly more reassuring. "If we recommend somebody," another board member told Genn regarding these sensitive positions, he should be hired so long as "they're not illiterate or deformed."

As part of this system, board members sometimes corrupt even parents. Because principals and assistant principals, unlike non-pedagogical employees, can't be hired without approval from a parent screening committee, the only hurdle to the board's ability to appoint supervisors is getting those choices through the parent screening committee. Parents have to include the preselected candidates among the top five choices they send to the superintendent.

A corrupt caucus can use various strategies to ensure that the parents do so. In a poor district such as 12, officials can easily exploit parents' poverty by buying them with jobs and other favors. Noville described how she secured the parents' allegiance at Community School 214. "I gave them all those Christmas gifts," she tells Cain. "Perfume and stuff." She also gave the PTA president, a poor single mother of three, a $300 "loan." In return, the PTA president promised to "twist [the parents'] arms" for her.

Poverty can also invite cynical bidding wars between rival candidates for parents' affections. Such a war erupted between Carmen Sonia Colon and James Gelbman over the principalship at Community School 44. Lucy Cruz had given the job to Colon, but because she was only the "interim acting" principal, Gelbman thought he could still snatch the appointment from her. Colon offered jobs to the parents on the screening committee. Gelbman counter-offered better-paying jobs and paid one parent's phone bills. This brought them over to his side, until it turned out that one of the key parents did not qualify for the job Gelbman hoped to get her. This in turn opened the door to superintendent Alfredo Mathew, who offered the best jobs yet, clinching parent support and ultimately appointing his own candidate.

A Superintendent's Undercover Life

Shortly after I became superintendent of District 27 in Queens in 1989, it was all laid out for me by board members James C. Sullivan and Samuel Granirer: if I was a good boy and allowed them to take charge of hiring and personnel issues, I could have a nice long career as superintendent. It was that simple.

I wanted no part of it. So I went to James Gill, chairman of the Joint Commission on Integrity in the Public Schools. I agreed to go undercover, working with detectives who helped record conversations from my home phone, in my car, at my office, and in restaurants. I wore a wire on my body. I had cameras in my office and my car.

I did this knowing that, regardless of the result, my career as an educator in the New York City public schools would be over, because the system ostracizes whistle-blowers. I recorded over 50 nerve-racking conversations in eight months. It was not the glamorous undercover work seen in spy movies. I was nervous, sweating profusely, sometimes even stuttering. I was always paranoid, worried that they could see right through me to the tape recorder strapped to my back. We were waiting for them to make a deal, and eventually they did: 11 jobs that needed to be filled "correctly" if I wanted an extension on my contract. We had the conversation on tape, along with other, more general references to getting jobs for friends of board members.

Caught red-handed, Sullivan and Granirer were indicted on two charges each at both the federal and the state levels. But in the end they copped a plea and did not go to jail for even one day. The New York State Supreme Court judge who issued the sentence apologized to me, saying he was sorry he couldn't determine the sentence himself, since it was predetermined at the plea-bargain level.

Although I was a hailed as a hero, I was, in the words of Gill, a "bloody hero": I was on the way out. After testifying before the Joint Commission, I was given the Seal of Recognition Medal by the mayor—and a bodyguard.

For me, the worst part of this whole saga wasn't the stress of going undercover or even having to leave my job. It was that so little came out of my efforts. The most disturbing thing is not that corruption exists at the community school board level, but rather that stealing children's school money is not even a high-risk activity, costing only lawyer's fees and public embarrassment on the rare occasion it is uncovered. This is not the fault of school decentralization—the blame lies in an environment of unaccountability that makes it easy to abuse the system. If you steal money from children, you should do time. It's that simple. —*Colman Genn*

If the parent screening committee fails to pass along the preordained candidate, a corrupt superintendent can simply disband it and start over. In District 12, for instance, one school's screening committee gave Evelyn Hey, a former board member's mistress, its lowest rating—14th out of 14. After the committee repeatedly refused to heed Mathew's requests to reconsider, he disbanded it and convened a new committee of handpicked parents. This committee ranked Hey first, and the board appointed her.

Board members know they run little risk in all this: political patronage is easy to hide, and the laws proscribing it are often equivocal and easily frustrated. For instance, even though hiring on the basis of partisan affiliation, where it is irrelevant to the job, violates employees' First Amendment rights, it is difficult to prove that board members condition hiring on politics. I know of no cases brought against board members under the First Amendment. And though the City Charter prohibits board members from "requesting" subordinates for political support, the more corrupt a district, the less board members need to "request" subordinates, who already know what to do.

Although the chancellor can remove board members for corruption, nothing prevents them from running again—and they often do. Moreover, because board elections can be won with as few as 300 votes—school board election turnout is typically 7.5 percent—"rogue" board members who have built patronage empires during their tenures can easily win their seats back. All this, together with arcane and technical school board election rules, insulates corrupt board members from public accountability, making it difficult for the community to turn them out of office.

Board members are also insulated from educational accountability, since the worse a district does, the more money it gets. Perversely, federal- and state-funded programs, which condition funding on citywide test scores and poverty levels, stop funding poor districts when their scores improve. The message to corrupt boards is clear: Keep it up.

Despite the harm patronage inflicts on education, the school reform debate is giving short shrift to what investigators have found. We can no longer afford to ignore these findings.

Their clear message is that we first need to confront corruption through law-enforcement initiatives to strengthen deterrence. We need legal reform to tackle the district-wide political wheeling and dealing that current laws don't effectively cover. And, as the special commissioner's record makes clear, we need an independent watchdog to investigate.

But more important even than this, we need to depoliticize our schools thoroughly. With a few conscientious exceptions, community school boards have largely failed New York's children. They have empowered political hacks while marginalizing parents, whose involvement in their children's education matters crucially.

Breaking the cycle of corruption is immensely difficult. The comprehensive law-enforcement initiatives I have mentioned are unlikely to have substantial long-term effects unless we change the system's structural incentives. We need, above all, to devise a system that blocks opportunities for wrongdoing, while reinforcing positive achievement.

In my view, the role of the school boards in hiring should be eliminated. But emphatically we should not return to centralization, which has its own hazards. Instead, each school should be given control over its own budget and hiring. The role of the central board and district offices should be to audit and monitor schools for performance, not to run them. By making the educational performance of each individual school paramount, we will be holding individual officials responsible for quality. A voucher program, or at least system-wide public school choice, should be instituted to promote healthy competition. With such a program, failing schools will lose students and money, while good schools will be rewarded. Faced with such accountability, officials who neglect education for corruption will do so at their peril. ●

Welfare Reform and Character Development

James Q. Wilson

As we Americans enter the last years of the twentieth century, we have every reason to rejoice about our condition but little inclination to do so. Despite widespread prosperity and a generally healthy economy, despite the absence of any immediate foreign threat and even many serious rivals, despite extraordinary progress in civil rights, personal health, and school enrollment—despite all this and more, we feel that there is something profoundly wrong with our society. Not with our own lives—the great majority of Americans are satisfied with their conditions and prospects—but with the conditions and prospects of our communal life.

Everyone wants to reform welfare. But how? Let the states experiment with ways to do it—as long as their plans put children first.

That communal life is thought to have many deficiencies, including crime, drug abuse, teenage pregnancy, welfare dependency, and the countless incivilities of daily life. What these problems have in common, in the eyes of most Americans, is that they result from the weakening of the family. The strength of Americans' conviction on this matter is great enough to induce leaders of almost every party and ideology to endorse, with varying degrees of sincerity, this diagnosis. The opposition to family values has either gone underground or is busily seeking to redefine those values so that their pursuit will not be too inconvenient. When Dan Quayle and Bill Clinton gave similar speeches only a few days apart, something important changed. For the moment.

Having arrived at something approaching a consensus, we must now face the fact that we don't know what to do about the problem. Again, the American people are well ahead of their leaders on this matter: they doubt that government can do much of anything, they are not optimistic that any other institution can do better, and they are skeptical that there will be a spontaneous regeneration of decency, commitment, and personal responsibility.

Our leaders must pretend they know what to do, but the people are not fooled. Washington passes a crime bill composed in equal parts of useful small steps, uninformed good intentions, and symbolic arm waving, and public skepticism grows. The president promises to end welfare as we know it but submits a bill that will at best change slightly a policy we know all too well, and the public ignores it.

Let me confess at the outset that I do not know what ought to be done and assert that I do not think anyone else knows either. But

I think that we can find out, at least to the degree that feeble human reason is capable of understanding some of the most profound features of the human condition. What we may find out, of course, is that we have created a society that can no longer sustain a strong family life no matter what steps we take. I am not convinced of that, for the very people who express the deepest pessimism are themselves leading, in most cases, decent lives amid strong human attachments and competent and caring families.

What we worry about is the underclass. There has always been an underclass and always will be one. But of late its ranks have grown, and its members have acquired greater power to destroy their own children and inflict harm beyond their own ranks. The means for doing so—guns, drugs, and automobiles—were supplied to them by our inventive and prosperous economy. We must either control more rigorously those means or alter more powerfully the lives of those who possess them. I wish to discuss the latter, because the public is rightly dubious about how great a gain in public safety can be achieved by the legal methods at our disposal and is properly indignant about the harm to innocent children that will result from neglecting the processes by which the underclass reproduces itself.

The great debate is whether, how, and at what cost we can change lives—if not the lives of this generation then those of the next. There are three ways of framing the problem.

First, the structural: The good manufacturing jobs that once existed in inner cities have moved to the periphery, leaving behind decent men struggling to get by without the work that once conferred both respect and money. Their place is now being taken by streetwise young men who, finding no meaningful work, have abandoned the search for it and scorn the ethic of work.

Second, the rational: Welfare benefits (AFDC along with Medicaid, subsidized housing, and food stamps) have become so generous as to make the formation of stable, two-parent families irrational or unnecessary. Such benefits have induced young women wanting babies and their own home to acquire both at public expense and have convinced young men that sexual conquest need not entail personal responsibilities.

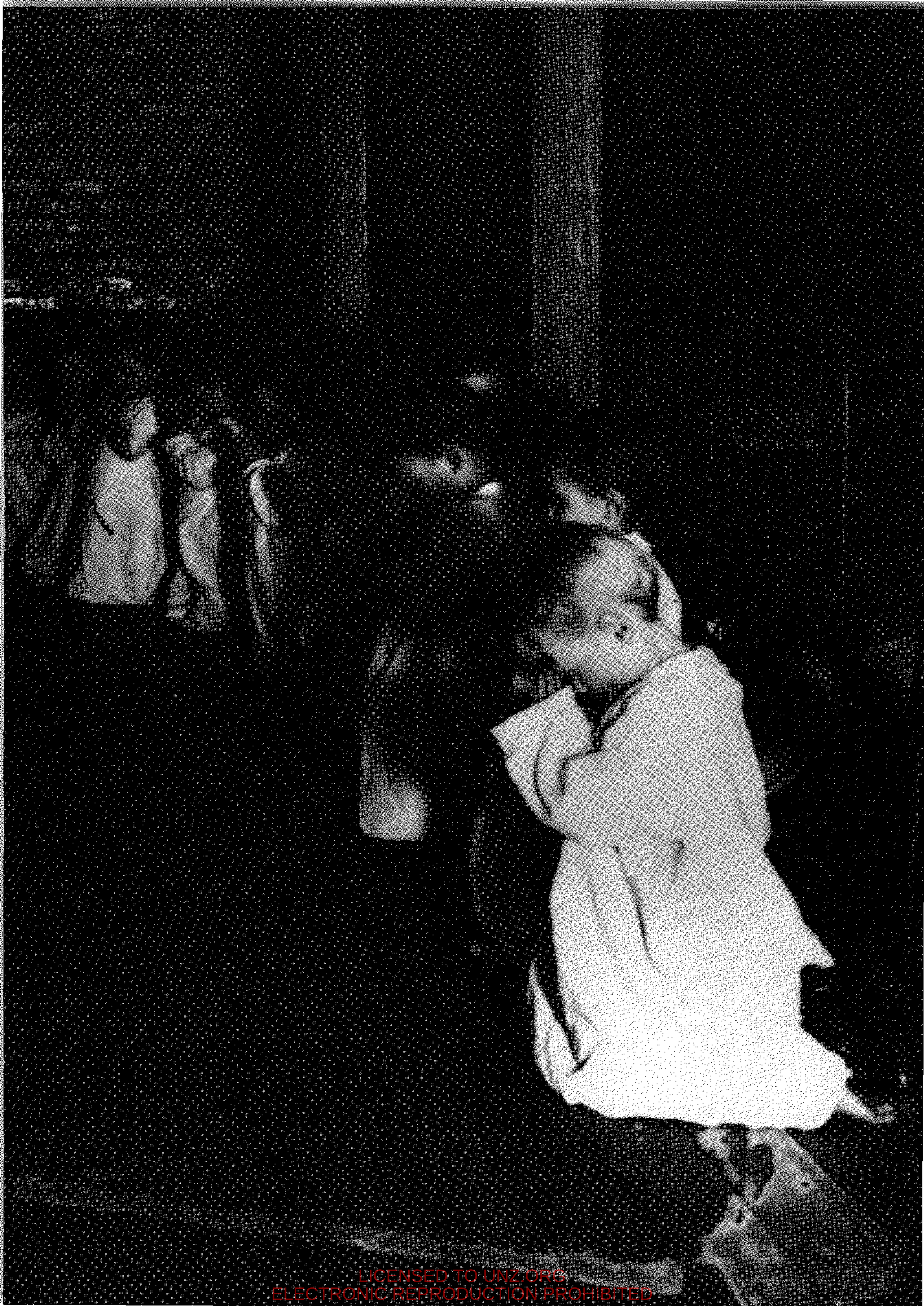
Third, the cultural: Traditional child rearing and family life can no longer compete with or bring under prudent control a culture of radical self-indulgence and oppositional defiance fostered by drugs, television, video games, street gangs, and predatory sexuality. When middle-class and working-class families were able to move out of inner-city neighborhoods, they took with them not only their financial capital but also their social capital—those attitudes, activities, and commitments that once restrained self-indulgence and socialized young people.

A visitor from another planet might say that all three factors have been at work and all need changing. But public debate tends to emphasize one or another theory and thus one or another set of solutions, because people define problems so as to make them amenable to solutions that they favor for ideological or moral reasons. In political discourse, we embrace strategies first and then look for problems they might solve in much the same spirit as a person holding a hammer looks for anything resembling a nail. Here, roughly, is what each analysis implies.

First, structural solutions: Create jobs and job-training programs in inner cities by means of either tax-advantaged enterprise zones or government-subsidized employment programs. Or else facilitate the relocation of the inner-city poor to places where jobs can be found and supplement the incomes of those who have low-paying jobs by means of the Earned Income Tax Credit.

Second, rationalist solutions: Cut or abolish AFDC benefits, or require work in exchange for welfare, or both. Make the formation of two-parent households more attractive than single parenthood and restore work as the only way for the physically able to acquire money.

Third, cultural solutions: Alter the inner-city



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THE BETTMANN ARCHIVE

Naptime at a children's home (above) and (previous page) prayer time at a Manhattan orphanage in 1889.

ethos by private redemptive movements, supported by a system of shelters or group homes in which at-risk children and their young mothers can be given familial care and adult supervision in safe and drug-free settings.

I have my own preferences among these alternatives, but it is less important to say what they are than to emphasize that I do not know which explanation is correct and thus which strategy will work. Because so many people embrace a single strategy as a way of denying legitimacy to alternative ones and to their underlying philosophies, let me briefly sketch the uncertainties and inadequacies of each taken alone.

First, the structural strategy. The evidence that links family dissolution with the distribution of jobs is uncertain or weak. Some people, noticing that jobs have moved to the periphery, board buses and follow them; other people, noticing the same thing, stay home and sell drugs. For example, Latinos in Los Angeles search actively for jobs that require 90-minute bus rides and long waits on street corners and do so even though those who are undocumented aliens risk the attention of the Immigration and Naturalization Service by gathering in conspicuous groups. Even if a serious job mismatch exists, it will not easily be overcome by enterprise zones if the costs of crime in the neighborhoods are high and cannot be compensated for by very low labor costs or very high customer demand. Moreover, in scanning potential workers, employers will rely on the most visible cues of reliability and skill, and they will use ethnicity, dress, manner, speech, and even place of residence as cues so long as they are useful proxies for qualities like dependability and trainability. No legal system can suppress the role of these cues, because they have substantial economic value. We know that firms that open inner-city establishments and screen potential employees will often bring in workers from outside the area because their work habits are better.

There is some evidence that people can be relocated to peripheral communities with benefits to themselves and no significant costs to the host neighborhoods. But if the program is publicly funded, the bureaucratic screening must be rigorous enough to approximate the market screening that occurs when mortgage lenders and landlords check the background of their applicants.

Otherwise, the resistance to such relocation, now intense in many cities, will become insuperable as the receiving neighborhoods experience rising rates of crime, gang activity, and drug abuse. I am skeptical that bureaucratic screening carried on under political directives can approximate market screening.

Finally, neither job-creation programs nor family relocation programs are likely to have much effect on the large number of young men who have dropped out of the labor force, who ignore paternal responsibilities, and who are already part of the oppositional culture.

Second, the rationalist strategy. After years of denying that the level of AFDC payments had any effect on childbearing, many scholars now find that states with higher payments tend to be ones in which more babies are born to welfare recipients. And when one expands the definition of welfare to include not only AFDC but also Medicaid, food stamps, and subsidized housing, increases in welfare are strongly correlated with increases in illegitimate births from the early 1960s to about 1980. At that point, the value of the welfare package in real dollars flattens out, but the illegitimacy ratio continues to rise.

There remain, however, several important puzzles in the connection between welfare and childbearing. One is the existence of great differences in illegitimacy rates across ethnic groups facing similar circumstances. Since the Civil War at least, blacks have had higher illegitimacy rates than whites, even though federal welfare programs were not invented until 1935. Charles Murray has shown that the probability that a baby will be born to a single woman is more than twice as high for blacks as for whites after controlling for age, education, and economic status. David Hayes-Bautista compared poor blacks with poor Mexican-Americans in California. He found that Mexican-American children were much more likely than black children to grow up in a two-parent family and that poor Mexican-American families were only one-fifth as likely as black ones to be on welfare. Even among blacks, Murray has shown that the illegitimacy rate is rather low in states such as Idaho, Montana, Maine, and New Hampshire (even though these states have relatively high AFDC payments) and quite high in the Deep South (even though these states have very low AFDC payments). Clearly, some important cultural factor is at work, one that has deep historical roots and that may vary with the size of the community and the character of the surrounding culture.

Despite these poorly understood cultural differences, there can be little doubt that ending welfare, cold turkey, would probably have a big effect on the behavior of welfare recipients. But what effect? Young women might have fewer babies, but would young men be more likely to assume paternal responsibilities for the babies that remain? Would children be raised better and more carefully protected from the destructive influences of drugs and gangs? And if we enforce a work requirement as a condition of welfare, will this improve child-rearing practices? Do we wish the young mothers of two-year-olds to be working? The group that we most want to see brought into the workforce—young males—would not be affected by a welfare-linked work requirement. They would be free to go on, in Elijah Anderson's graphic phrase, seeking "sex without commitment and babies without responsibility."

Third, the cultural strategy. There are many efforts in many cities, by public and private agencies, individuals, and churches, to persuade young men to be fathers and not just impregnators, to help drug addicts and alcoholics, and to teach parenting skills to teenage mothers. Robert Woodson has campaigned tirelessly to attract more attention and support to these efforts, such as the House of Umoja in Philadelphia. Some have been evaluated, and a few show signs of positive effects. Programs such as the Perry Preschool Project in Ypsilanti, Michigan; the Parent-Child Development Center in Houston; the Family Development Research Project in Syracuse, New York; and the Yale Child Welfare Project in New Haven, Connecticut, seem to have had positive and lasting effects on the children who went through them—better behavior, lessened delinquency, more success in school.

Myron Magnet and I have both endorsed the idea of requiring young, unmarried mothers to live in group homes with their children under adult supervision as a condition of receiving public assistance. I have suggested that we might revive an institution that was common earlier in this century but has lapsed into disuse of late—the boarding school (sometimes, mistakenly, called an orphanage) for the children of mothers who cannot cope. At one time, such schools provided homes and educations for over 100,000 youngsters.

Though I confess I am attracted to the idea of creating wholly new environments in which to raise the next generation of at-risk children, I must also confess that I don't know if it will work. The programs that we know to be successful, like the Perry Preschool Project, are small, experimental efforts led by dedicated staff. Can large versions of the same thing work when run by the average counselor or teacher? And even these successes predated the arrival of crack cocaine on the streets of our big cities; can even the best programs salvage people from that viciously destructive drug? There is evidence that such therapeutic communities as Phoenix House can salvage people who stay in them long enough.

Our overriding goal ought to be to save the children. Other goals should be secondary to improving the life prospects of the next generation.

Though I would hope that efforts to broaden this system of alternative families would rely on private organizations using public funds, I am aware that the best private institutions are not likely to do as well as even a below-average family. But unlike the fierce partisans of family preservation, I believe that decent institutions can sometimes do better than the worst families.

If these three alternatives or something like them are what is available to us, how do we decide what to do? Before trying to answer that question, let me assert three precepts that ought to shape the answer. First precept: Our overriding goal ought to be to save the children. Other goals—reducing the cost of welfare, discouraging illegitimacy, and preventing long-term welfare dependency—are all worthy. But they should be secondary to the goal of improving the life prospects of the next generation.

Second precept: Nobody knows how to achieve this goal on a large scale. The debate that has begun about welfare reform is largely based on untested assumptions, ideological posturing, and perverse priorities. We are told that worker training and job placement will reduce the welfare rolls, but we know that worker training and job placement have so far had at best very modest effects on welfare rolls. And few advocates of worker training tell us what happens to children whose mothers are induced or compelled to work, other than to assure us that somebody will supply day care. We are told by others that a mandatory work requirement, whether or not it leads to more mothers working, will end the cycle of dependency. We don't know that it will. Moreover, it is *fathers* whose behavior we most want to change, and nobody has explained how cutting off welfare to mothers will make biological fathers act like real fathers. We are told that ending AFDC will reduce illegitimacy, but that is, at best, an informed guess. Some people produced many illegitimate children long before welfare existed, and others in similar circumstances now produce none, even though welfare has become quite generous. I have pointed out that group homes and boarding schools once provided decent lives for the children of stable, working-class parents who faced unexpected adversity, but I do not know whether such institutions will work for the children of underclass parents enmeshed in a cycle of dependency and despair.

Third precept: The federal government cannot have a meaningful family policy for the nation, and it ought not to try. Not only does it not know and cannot learn from "experts" what to do; whatever it thinks it ought to do, it will try to do in the worst possible way: uniformly, systematically, politically, and ignorantly. Today official Washington rarely bothers even to give lip service to the tattered principle of states' rights. Even when it allows the states some freedom, it does so only at its own pleasure, reserving the right to set terms, issue waivers, and attach conditions. Welfare politics in Washington is driven by national advocacy groups that often derive their energy from the ideological message on which they rely to attract money and supporters. And Washington will find ways either to deny public money to churches (even though they are more deeply engaged in human redemption than any state department of social welfare) or to enshroud those churches that do get public money with constraints that vitiate the essential mission of a church.

The clear implication of these three precepts when applied to the problem we face is that we turn the task of, and the money for, rebuilding lives—welfare payments, housing subsidies, the lot—over to the cities and states and the private agencies to be found there, subject only to two conditions. First, the minimum but fundamental principles of equal protection must apply, and, second, every major new initiative must be evaluated by independent observers operating in accordance with accepted scientific canons.

Some states or counties may end AFDC as we know it; others may impose a mandatory work requirement; a few may require welfare recipients to turn their checks over to the group homes in which they must reside or the boarding schools their children must attend. Some may give the money to private agencies and charge them with worker training, parent training, and preschool education. In some places there may be efforts, as there have been in Chicago, to relocate welfare recipients to the periphery; in others public housing projects will be turned over to their tenant-owners. And amid all this hubbub, nosy scholars will poke around, funded by something akin to the National Science Foundation, trying to find out which programs actually help children and at what cost.

If the federal government cannot do the job, why do I think states can do any better? For two reasons. First, there are 50 of them. Just by the laws of chance alone, we are more likely to have a few smart and daring governors than one smart and daring president. Wisconsin has elected Tommy Thompson, Massachusetts Bill Weld; the United States has not managed to elect either and is not likely to do so. And because there are 50 states, they must compete—for residents, employers, and good credit ratings—by doing those things necessary to create decent living environments at reasonable costs. State leaders cannot as easily as a president attack crime and illegitimacy and gang warfare with only grandiose rhetoric and feel-good legislation; their voters can more readily hold them accountable for actually doing something about these matters, and so they must try to do them.

Second, most of the plausible ideas for improving family life that have penetrated the Beltway barrier behind which our government crouches have come not from Washington experts or lobbyists but from citizens and officials in cities, counties, and states who have actually tried something new and found that it works.

States fell into disrepute in the 1950s and 1960s for one overriding reason—they were the bastions of segregation. The national government also practiced segregation, of course, but because Washington did not educate our children, police our streets, or run our parks and playgrounds, it was less visible. The battle for civil rights has not been completely won, but everywhere, in every state, the forces of racism are in retreat. The states, having been purged of Jim Crow laws and lily-white legislatures, ought now to resume their rightful and constructive role in providing for the common welfare.

But though there is reason to think that states, counties, and cities will be more imaginative and more likely to enlist private agencies than

Washington, there's no guarantee they'll act this way. The problem for the national government is twofold: it must not only get out of the way but also must leave behind some incentives for bolder state action.

I am not certain how to do this. Finding out how ought to be one of the central tasks of the hearings on welfare reform that presumably will occur in the next Congress. The welfare money returned to the states might be supplemented with challenge grants to help pay for innovative programs. Opportunities might be provided for pooling housing subsidies and welfare checks so as to permit more extensive interventions.

Even if the states should prove themselves unimaginative or listless, there are philosophical reasons for making what is now called welfare a state responsibility supported in part by federal funds. To the extent that welfare involves income redistribution, it is properly a national duty. But to the extent that it involves character development, it is a local one. When it comes to defining the essential features of a decent family life and prescribing the desirable guidelines for child care, the clearest, most authentic voices will be those of friends and neighbors, not those of policy analysts and distant legislators. The more precisely we attune the design of child care to the central message of the communal voices, the more likely we are to make progress.

Though philosophical as well as practical considerations suggest state and local experimentation, we must be prepared for the possibility that nothing we do by plan will make a large difference in the life chances of at-risk children. We are experiencing the working out of a massive cultural shift that has been under way for many decades—indeed, for most of this century. That cultural shift has as its central feature the emancipation of the individual from the restraints of tradition, community, and government. Most of us have benefited greatly from the freedom and opportunity that have resulted. And most of us have paid only a modest price for these benefits: we may have children who wear odd clothes, hear music that conveys a frenetic mindlessness, and confront media that are increasingly vulgar. We can endure these things; some, forever adolescent, even enjoy them.

But those among us who are for any reason especially lacking in internal restraints and thus especially vulnerable to cultural shifts have paid a very high price. Sex has been divorced from commitment, child rearing separated from family life, escapism extended to drug abuse, and entry-level work redefined as demeaning. This is not a uniquely racial problem or a uniquely American one; it is a feature of much of the industrialized West.

We must choose among three responses: await a moral reawakening, increase public safety, or try to rebuild the family lives of our most at-risk children. We should strive for all three, but with varying degrees of optimism. Moral revitalization may occur, but it will not occur by plan. Public safety can be enhanced, but the cost is high, and it will punish those people whose lives are already blighted and whose progeny are already set upon the wrong path. Remaking family life is equally costly and its prospects equally uncertain, but we have done it in the past. In Victorian England and Victorian America, countless organizations tried to save the children and did so on the basis of firm convictions as to what constitutes a decent family life. We have to some degree abandoned the effort, and the moral convictions that underlie it, in favor of something we now call, disdainfully, welfare. We have replaced our desire to save children with a desire to end either poverty or dependency. Poverty and dependency are social ills, but there are poor and dependent families who raise decent children.

What we call problems shapes how we approach them. Let us stop calling our problem welfare, where young mothers are involved. We ought to be talking about saving the children. If we reduce poverty or dependency and still allow incompetent parents to raise vulnerable children, we will succeed only in finding a new route to the false utopia that Karl Marx held out to us: a world without want or subservience, but also one without virtue, or decency, or self-respect. ●

Sweeping Up After the Rights Revolution

Richard E. Morgan

For the past three decades, crime and disorder have plagued American cities—and the U.S. Supreme Court is partly to blame.

Today's Supreme Court won't overturn the "rights revolution" that helped make urban life more violent and less civil. But cities can persuade the justices to moderate some of the excesses—and that could make a world of difference.

The Court effected a "rights revolution" in the sixties and seventies—a constitutional transformation that established new rights the Constitution doesn't mention, that expanded free speech far beyond its traditional definition, and that freed individuals to sue state and local officials claiming a violation of legal rights. As a direct consequence, the Court has made it far harder for governments to enforce the law and maintain order in public spaces and institutions. Police officers, school principals, public housing managers, and other public servants now wrestle daily with convoluted legal procedures designed to limit their authority, and they know that a misstep could land them in court should they run afoul of judicially created rights. This revolution harmed life in inner cities most of all. As Justice Clarence Thomas recently observed (*City Journal*, Autumn 1994), "These decisions . . . have an enormous impact on the opportunities available to a community in solving the problems that plague the poorest of our citizens."

Critics hoped that the Reagan era's more conservative Supreme Court would roll back the rights revolution's excesses. No such thing. Although the eighties saw a slowdown in judicial creation of new rights, Reagan Court appointees Sandra Day O'Connor and Anthony Kennedy, along with Bush appointee David Souter, have proved unwilling to overturn major precedents. Together with Clinton nominees Ruth Bader Ginsburg and (probably) Stephen Breyer, they form the operational center of today's Court—a Court highly unlikely to favor major reversals. Thus all of the landmark decisions of the rights revolution will remain in force for the foreseeable future.

Even so, change for the better is not only possible but likely: every year, the rights revolution's damaging effect on American society's ability to maintain public order becomes plainer, and public concern about it grows broader, deeper, more mainstream. In response, without overruling any of the rights revolution precedents, the Court could accomplish a great deal by making modest

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retrenchments and modifying legal doctrines at the margins. What's more, such actions, which have an important, healthy impact on the real world, are likely to appeal to the "centrists" who control today's Court. Let me suggest six lines of argument likely to sway these centrists.

The Court should treat more seriously the common-law misdemeanors that are the bedrock of traditional methods of maintaining civic order. The ability of the police to keep streets, transit systems, parks, and other public spaces livable rests on a legal foundation of about half a dozen ancient common-law offenses that have been, in various ways, codified by states and municipalities—crimes such as disturbing the peace, disorderly conduct, use of obscene and abusive language, vagrancy, and obstruction of public ways. Over the past 30 years, the Supreme Court has struck down many such laws, making police and prosecutors reluctant to enforce those that remain on the books.

Two judicial doctrines particularly imperil these statutes: "vagueness" and "overbreadth." Both doctrines may be wielded with circumspection and discrimination or with a heavy hand that can further enfeeble law enforcement.

The idea of vagueness derives from the due process clauses of the Fifth and Fourteenth Amendments, and it is an idea that the common law always took seriously. After all, the evil of a vague criminal statute is twofold: people receive inadequate notice that certain behavior is forbidden, and police have too much discretion in deciding how and when to apply the law.

Laws have to be clear, of course; but it is not always possible or necessary for them to be specific, which is a quite different thing. Legislatures can only address large areas of misbehavior in general terms. "Reckless driving" and "driving to endanger" are familiar examples, as are "cruelty to animals" and "neglect of children." In these cases, the ordinary use of language and common cultural experience provide sufficiently clear notice of the kinds of behavior that are illegal.

In other cases, legislatures could help matters by clarifying an old offense—for example, by changing a statute against "obstruction" to forbid "lying" in public ways. But even in this case, the Court should dismiss out of hand elaborate hypothetical arguments, smacking of medieval scholasticism, over whether sitting propped against a wall with legs extending onto the sidewalk really constitutes "lying." Instead, in time-honored fashion, the Court should judge the constitutionality of an allegedly vague law in light of the conduct to which authorities have applied it in the case at hand.

The real issue, of course, is how much discretion police on the street should exercise, always a vexing question. But we have passed (let us hope) through an era in which, among the legal elites and intellectual classes, every hand has been turned to limiting police discretion. It is realistic to urge the contemporary Court to seek finer balances.

Overbreadth is an idea that rests on the First Amendment's protection of free speech. The Court has used this concept to say that a statute that deals with utterance in broad, descriptive terms, such as "obscene and abusive language," is unconstitutional because it might conceivably be applied in ways that would limit constitutionally protected speech. By this approach, laws that can have both legitimate and illegitimate applications can never be applied at all because of the danger that someone somewhere might be intimidated ("chilled") and refrain from engaging in what would be protected speech.

Unlike vagueness, overbreadth is not a doctrine deeply rooted in our legal history, and its pernicious effects can be countered by the Court's being encouraged to take more seriously than it has done in recent years the older doctrine of "fighting words" that the 1941 case of *Chaplinksy* v. *New Hampshire* established. There Justice Frank Murphy, one of the strongest proponents of free speech to sit on the Court in the twentieth century, wrote that "there are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."

Much of the disorder in America's cities is the result of deinstitutionalization of the mentally ill, a process that accelerated in the mid-sixties and filled the streets and the parks with seriously disturbed people who are sometimes, as in the infamous case of Larry Hogue, dangerous. The Supreme Court's contribution to deinstitutionalization was quite measured and sensible, in contrast with the utopian enthusiasm of professional civil libertarians and many mental health specialists. *O'Connor* v. *Donaldson*, in 1975, held that a young man who had been adjudged mentally incompetent but never dangerous, and who was receiving no treatment, could not be indefinitely confined against his will. *Addington* v. *Texas*, in 1979, held that, given the magnitude of the "liberty interest" involved in civil commitment proceedings—since institutionalization amounted, in effect, to incarceration—due process required government to meet the standard of "clear and convincing evidence" rather than to meet the less demanding "preponderance of evidence" standard that is used in most civil lawsuits.

The problem is the way in which this new constitutional law has trickled down in state laws and regulations that make it extremely difficult to commit the dangerously mentally ill. New York provides a vivid example. In August 1994, a Manhattan jury voted to release Ronald Crumpley, a confessed killer who was, concededly, still mentally ill and dangerous, from an institution for the criminally insane. The jury felt it had no other choice because a 1981 New York State law appears to make continued incarceration possible only if the state can give positive answers to all of five interlocking questions: Has the prosecution shown that Mr. Crumpley suffers from a mental disease? Is psychiatric care or treatment essential to his welfare? Is inpatient care in a hospital necessary? Does he pose a physical danger to society? Have prosecutors shown that he does not recognize his own need for treatment?

Only to the last question did the jury answer no—that is, the State of New York had persuaded it that Crumpley was insane, dangerous, and in need of treatment and hospitalization. But the jury released Crumpley because the state had not persuaded it that Crumpley himself did not understand this.

A misunderstanding of the statute? Perhaps, but the kind of mistake the highly formalistic laws governing commitment invite. As psychiatrist Sally Satel points out (page 78), most mental health experts now agree that existing laws make it too difficult to commit those with serious mental illness. But skilled advocates resist reform, arguing that every legal jot and tittle put in place over the past 25 years is constitutionally required and therefore beyond the power of legislatures and judges to alter.

Here the Supreme Court can help by making clear that the constitutional test for civil commitment must take into account what lawyers call the "totality of circumstances." That is, no particular factor (such as the individual's understanding or lack of understanding of the need for treatment) should be decisive. Under this standard, a patient who is no longer dangerous once he has taken psychotropic drugs might be kept in a hospital if there were clear and convincing evidence (based, say, on past performance) that he would be likely to go off his medicine if not confined. Similarly, a dangerous patient would not be a candidate for release just because no effective treatment for him had been found beyond enforced custodial care. This would not involve overruling anything—only reading the precedents sensibly.

The rights revolution also created obstacles to the enforcement of laws against serious crimes. One doctrine that deserves reexamination is the "exclusionary rule," which the Warren Court established in the famous 1962 case of *Mapp* v. *Ohio*. That decision required state courts to exclude from criminal trials evidence that police had improperly obtained—no matter how trustworthy the evidence or how small the officers' error. The Court reasoned that the only way to make police and prosecutors respect its interpretations of the Fourth Amendment's protection against unreasonable search and seizure was to punish them for violations by taking away the evidence. The exclusionary rule instantly created an inflexible national standard that replaced a multitude of state-crafted rules about the admissibility of evidence. And so today, to paraphrase Justice Benjamin Cardozo, when the constable blunders, the criminal goes free.

No matter how compelling the arguments against the exclusionary rule, there is virtually no chance that the Supreme Court will overturn *Mapp*. But the rule need not remain quite so serious an obstacle to effective criminal prosecution as it has been. In 1984, the Court recognized a limited exception to the rule, allowing prosecutors to introduce evidence that had been seized on the basis of a defective search warrant, if the police reasonably believed the warrant was valid. The reasoning was clear: if the purpose of the exclusionary rule is to discourage police misconduct, and if officers believe they are playing by the rules, then it accomplishes nothing to exclude evidence simply because the magistrate made an error in issuing the warrant.

A similar argument could lead to a further exception, this time for searches without warrants. For warrantless searches to be constitutional at all, an investigator must have "probable cause" to believe that they will turn up evidence of a crime. In addition, the investigator must show that "exigent circumstances" made it imperative that he act on the spot rather than take the time to obtain a warrant. Probable cause and exigent circumstances are blurry legal concepts. If an officer makes a close call on one or the other, only to be overruled by a judge, does that mean that the evidence must be lost?

The televised drama of O. J. Simpson's trial is instructive here. Legal experts interviewed on television split about evenly as to whether the officers who arrived at Simpson's gate fresh from the murder scene were right in thinking that exigent circumstances justified their warrantless entry onto Simpson's premises. Had Judge Lance Ito ruled that exigent circumstances did not exist, then under current Fourth Amendment doctrine the evidence would have been altogether lost. A more sensible approach would be to preserve the evidence unless the judge concludes that the officers acted in bad faith—that is, that reasonable, trained professionals could not have believed that exigent circumstances existed, and that the officers appeared to have resorted to such an argument only as a pretext to obscure their own carelessness or uncertainty about probable cause. There is a great difference between an officer making a judgment call and an officer cooking up a story to excuse his going where he knew he had no right to be. Such an approach properly places the burden of demonstrating a good-faith mistake on the police, but if their position proves plausible, the evidence need not be excluded. The exclusionary rule would remain in place for the truly lawless law enforcers who moved the Court to adopt the rule in the first place, without senselessly penalizing the community by sacrificing trustworthy evidence.

The Court could similarly adopt a more reasonable view of what constitutes "reasonable suspicion." To understand how this concept can constrain law enforcement, consider a creative proposal that James Q. Wilson put forth in a recent *New York Times Magazine* essay. Since conventional gun control strategies are ineffective at combating urban violence—most of the weapons used are illegally acquired—Wilson suggests that police adopt an interventionist style of patrol, in which officers would approach and stop people in public places who they thought might be armed and frisk them for weapons. Right now, Wilson argues, most patrol officers don't really bother to look for illegal firearms. If they did so, it could have an enormous deterrent effect.

Eminently sensible, Wilson's proposal nevertheless could be problematic under current law. The Supreme Court's interpretation of the Fourth Amendment, beginning with the 1968 case of *Terry* v. *Ohio*, allows an investigative stop (very brief detention accompanied by a frisk for the protection of the officer) only if the officer has "reasonable suspicion" to believe that the suspect has committed or is about to commit a crime. Earl Warren, in one of the more mysterious utterances from the constitutional literature of the sixties, explained in the decision that reasonable suspicion must be based on "a specific and articulable fact," and, accordingly, judges have tended to set the standard for reasonable suspicion rather high. For instance, the fact that someone displays characteristics that match a police profile of, say, a drug courier or terrorist and is in a high-risk area (such as the Miami airport) is not enough to establish reasonable suspicion. The law is somewhat ambiguous, but it appears to require some *individualized* basis for the suspicion—that is, that the person being stopped has done something that justifies the stop.

But one may hope for improvement in this legal doctrine. The constitutional baseline is, after all, "reasonableness," and a proposal like Wilson's, entailing only limited invasions of privacy, is luminously reasonable. Law enforcement agencies should try to persuade the Court to approve modestly more interventionist patrol tactics, recognizing that, as a practical matter, a combination of appearance, demeanor, and setting may be powerfully suggestive to an experienced officer. Surely a policeman needn't have to testify to a telltale bulge or a flash of sunlight on nickel finish before approaching a suspicious person in public.

Surely a policeman needn't have to testify to a telltale bulge or a flash of sunlight on nickel finish before approaching a suspicious person in public.

The rights revolution expanded procedural protections not only for suspected criminals but also for recipients of government benefits. Justice William Brennan's 1970 opinion in *Goldberg* v. *Kelly* held that the due process clause of the Fourteenth Amendment requires that individuals receive a formal hearing before losing their welfare payments—or, by extension, other government benefits—for violating the rules of the program. Brennan argued that welfare, as a government-conferred entitlement, is a form of property that the government cannot constitutionally take away without due process of law. In quick succession, the Court extended this logic, establishing elaborate hearing requirements for firing or demoting a government employee, suspending or revoking a driver's license, or disciplining a prisoner, parolee, or public school student.

In the abstract all this may sound benign enough. But consider it from the perspective of an enforcing authority, literally "on the spot." Imagine the manager of a public housing project faced with a problem of unruly tenants. It is the threat of eviction that gives force to the manager's efforts to persuade noisy, dirty, or socially hostile tenants to modify their behavior. If eviction is hedged about with procedural requirements (all of which mean time, money, and paperwork), the order-maintaining authority of the manager is dramatically reduced. As a result, residents who follow the rules are left at the mercy of the unruly.

After its burst of enthusiasm for extending procedural due process to all sorts of administrative encounters between government and individuals, the Supreme Court drew back modestly, by giving more serious consideration to the question of when an entitlement existed. (For example, it rejected a state college professor's claim he had a property interest in the renewal of his one-year contract after it expired.) The Court should exercise even greater care in defining government benefits as property, coupled with equal care in deciding *what process is due*. Procedure, after all, comes in all shapes and sizes, and one can envision very simple notice and right-of-reply requirements that would not have the paralyzing effect on public authority that evidentiary hearings have. This kind of circumspection does not require reconsideration of *Goldberg* v. *Kelly*. But fewer required adversary proceedings before governmental action would mean more vigorous government.

Even more than the actual legal restrictions imposed by *Goldberg* was the message sent to public-sector managers: Keep your heads down. Many of our everyday order maintainers are risk-averse people—schoolteachers and principals, for instance—and it has not registered in their occupational subcultures that the Court has already backed off a bit. Instead, they are impressed by such things as the extreme difficulty of applying any discipline to a student classified as "special" under the ponderous Developmentally Disabled Assistance and Bill of Rights Act of 1975. And they understand all too well that if someone whom they offend can argue, even implausibly, that they have violated a requirement of either a Supreme Court decision or a federal statute, they can be *sued*.

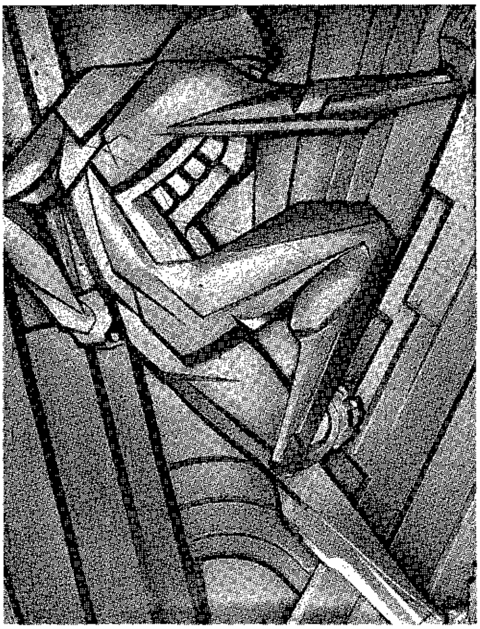
This brings us to that mother of debilities that hamstring operating-level public officials, a remnant of an old Reconstruction-era statute known as Section 1983. Originally put in place to deal with the systematic denial by state officials of the basic civil rights of blacks, Section 1983 allows a person to sue someone who, "under color of state law," deprives him of rights secured by the Constitution or laws of the United States. Because this carried with it the obvious danger of turning every grievance against any state or local government into a federal case, the Supreme Court, for 90 years, interpreted the original language, dating to 1871, strictly.

All that changed with Justice Douglas's opinion in *Monroe* v. *Pape* in 1960. Here the Court held that the phrase "under color of law" could apply not just to official acts of the state but to isolated acts of misbehavior by state employees—even acts that violated state law and for which a state remedy existed. Subsequent decisions allowed plaintiffs to collect damages from municipal treasuries for employee misbehavior. By making it so easy to sue at the same time as it was creating a plethora of new rights, the Court created a legal bonanza in which state prisoners now rush to federal courts over lost mail or dull food, parents of unruly schoolchildren bully school officials, and incompetent or dishonest government employees endlessly avoid discharge or extort porcine severance settlements.

The result: the diminished effectiveness of officials from school board members to local clam wardens, who now must consider federal civil liability in any decision that will adversely affect anyone—a far cry from protecting the freedmen of the South against local officials who were systematically denying them federally protected rights according to an explicit or customary public policy. While individual justices have observed over the years that Section 1983 was never intended to provide a federal forum for all manner of claims against state officials, successive Court majorities have taken us far down the road toward that result. There is ample room, therefore, for the Court to make a course correction.

Nothing so radical as overruling *Monroe* v. *Pape* is needed. But state and local governments should urge two lesser adjustments. First, the Court should declare that Section 1983 suits can be brought only on account of a pattern of actions that could plausibly be characterized as state *policy*. Second, the Court should hesitate to allow Section 1983 actions based on claims that far-fetched property or liberty "interests" are fundamental constitutional rights. A state or local government's actions should become a federal case only if basic constitutional or statutory rights are at stake.

The suggestions offered here are realistic for *this* Supreme Court—a series of adjustments rather than dramatic change. Not only would such relatively small alterations in emphasis have salutary legal impacts; they could perform an important signaling function as well.



Consider an example: Chief Justice Warren Burger's opinion for the Court in the 1973 obscenity case *Miller* v. *California*. In 1957, the Court had established a strict test that made it very difficult for government officials to show that material was legally obscene and therefore unprotected by the First Amendment. For the next decade and a half, the sex industry proliferated. Burger's 1973 opinion overruled nothing; it simply fine-tuned the legal definition of obscenity by allowing for some local variation in one element of the test. Under *Miller*, material may be judged obscene if it exceeds "contemporary community standards" of explicitness: what is acceptable in San Francisco need not be in Savannah.

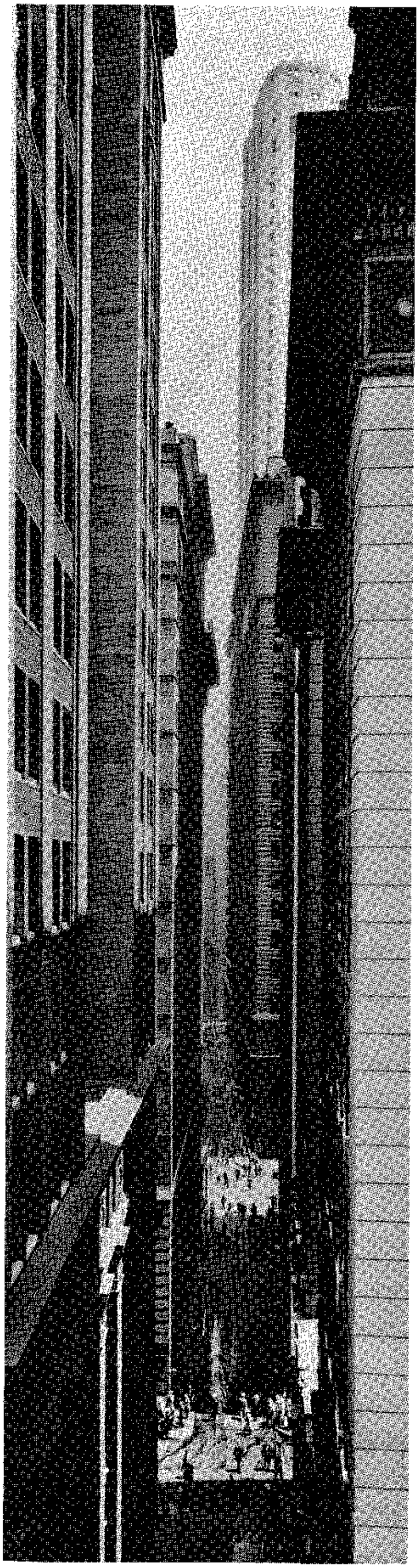
Burger did not return the Court to anything like the definition of obscenity that had existed before 1957. But the *Miller* decision had considerable impact. Some jurisdictions moved to enact ordinances tracking *Miller* v. *California*; most did not. But there was a subtle shift in the relationships between the pornographers and public authority. No longer could one assume that the purveyor would always win. Now the legal system was creating incentives to circumspection, at least in those communities that cared about the problem.

Obscene movies are still around, of course—mostly in discreet containers in the back rooms of video stores. But the sex industry is considerably less obtrusive than it was in the late sixties and early seventies. This did not result solely from a decision of the Supreme Court; other political and technological factors also played a role. Still, no one who remembers the pornography industry at its blatant and bawdy worst can think that *Miller* v. *California* did not help tame and contain it.

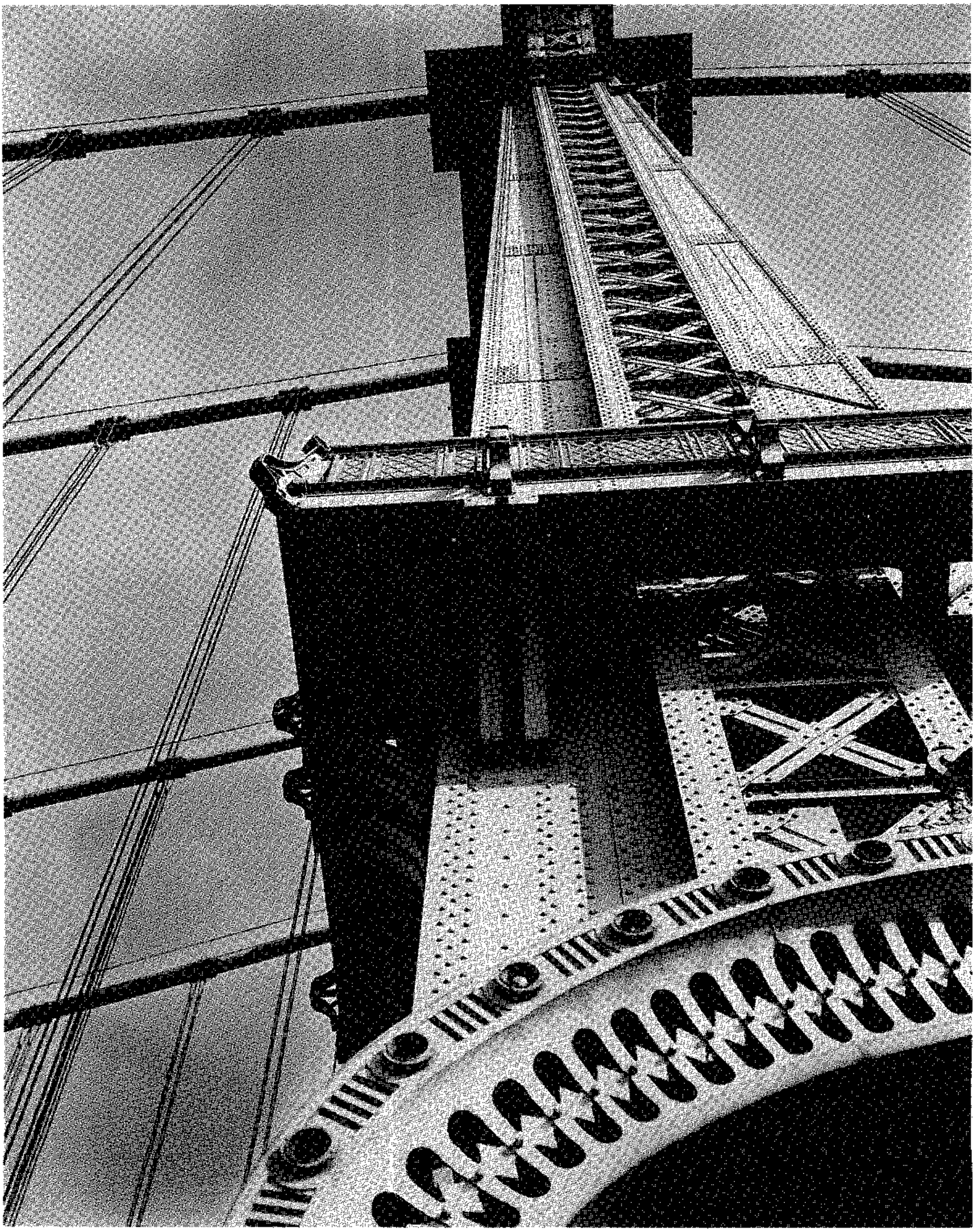
Many of the cases that made up the rights revolution were wrongly decided on dubious constitutional grounds. In the long run, one may hope the Supreme Court will reverse some of these precedents, though assuredly, given the philosophical composition of the current Court, drastic changes won't come soon. But even marginal improvements like those I have suggested would go far to signal that the exercise of authority by public officials is not automatically suspect in America—that we as a nation can affirm and defend bounded spheres of discretion for the school principal and the beat cop. Such a signal would reverberate: it would shift the culture as well as the laws. And by restoring the authority and confidence of public officials who deal directly with crime and disorder, such Supreme Court actions would allow Americans to create stronger, safer, more civil communities. ●

BERENICE ABBOTT

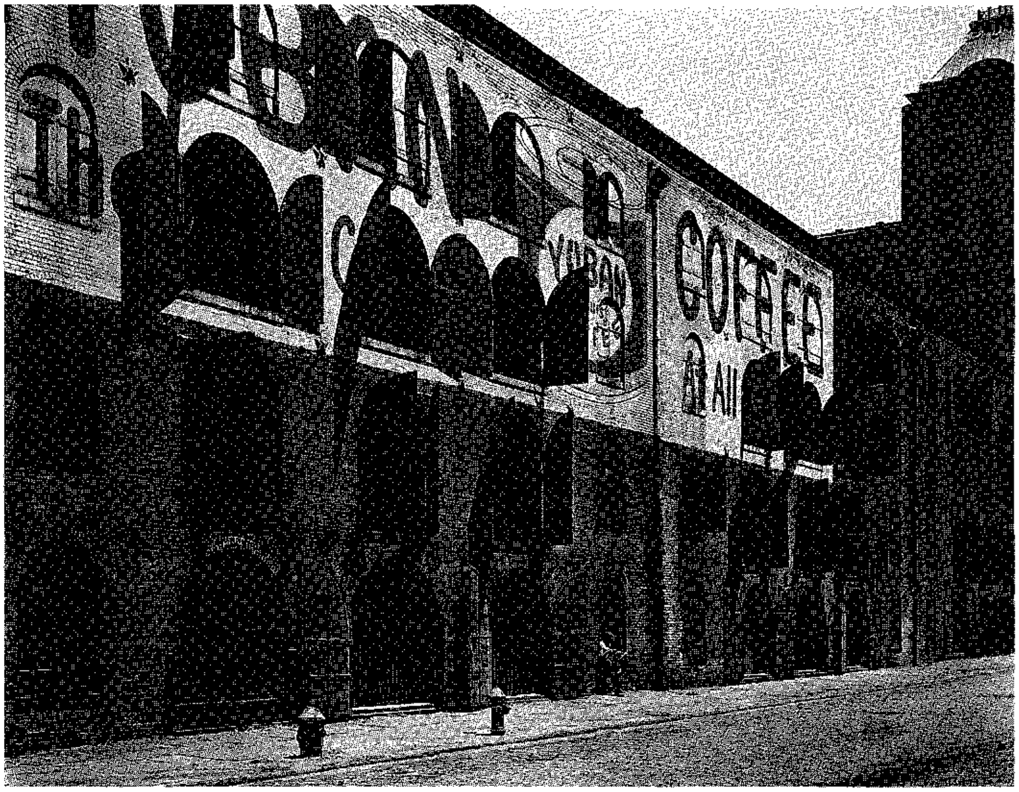
A NEW YORK PORTFOLIO



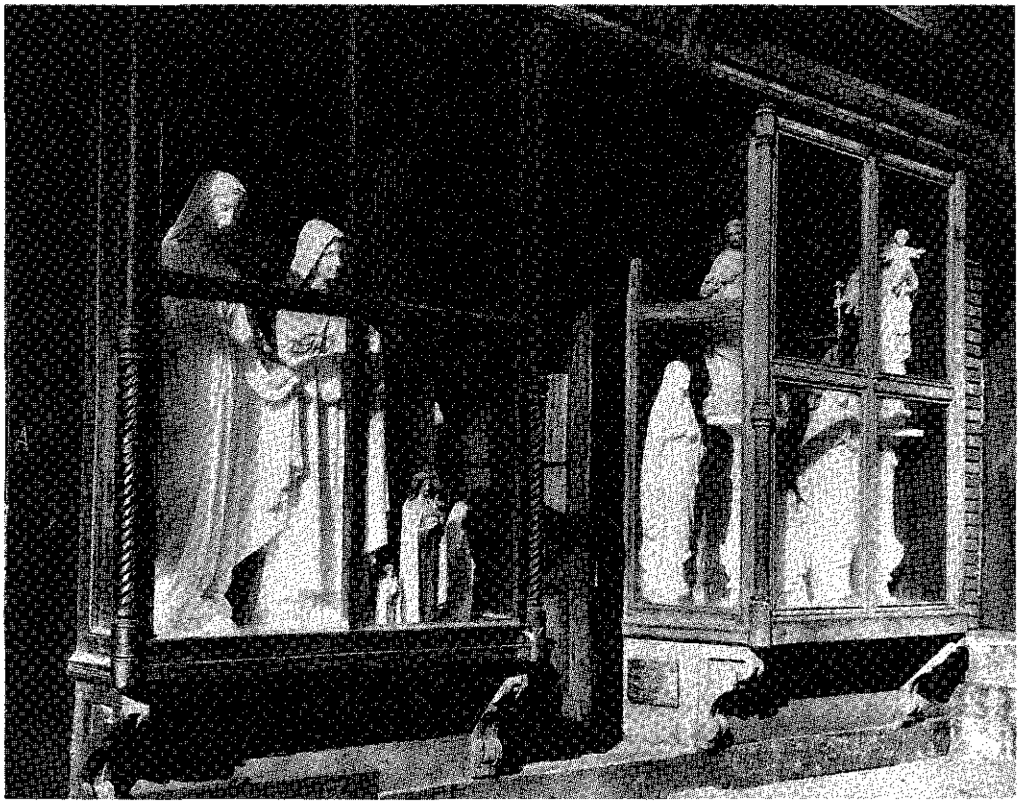
Exchange Place, New York, c. 1934



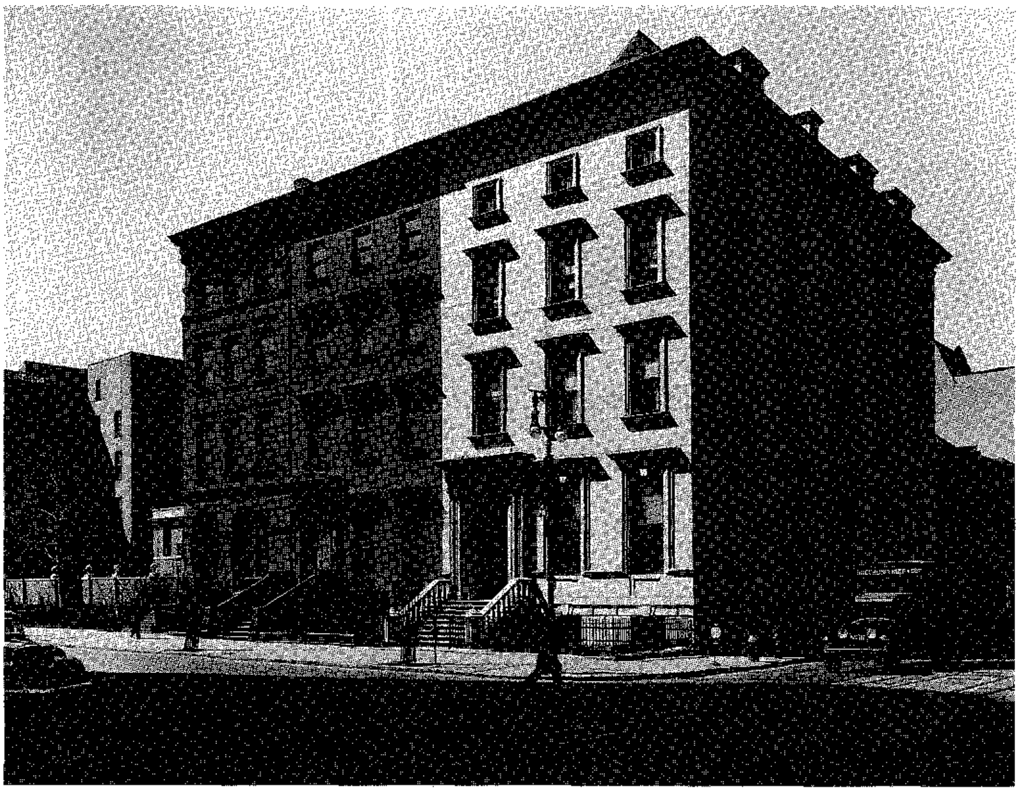
Manhattan Bridge Looking Up, New York, 1936


YUBAN
COFFEE
At All

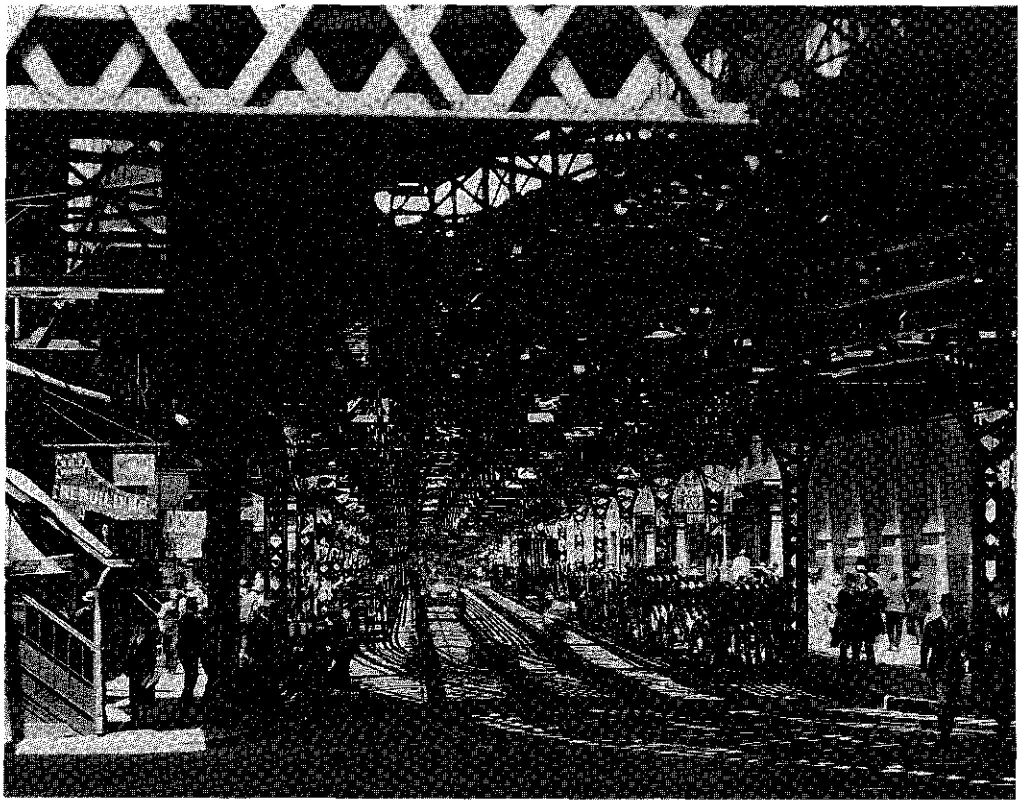
Yuban Warehouse, Brooklyn, 1936



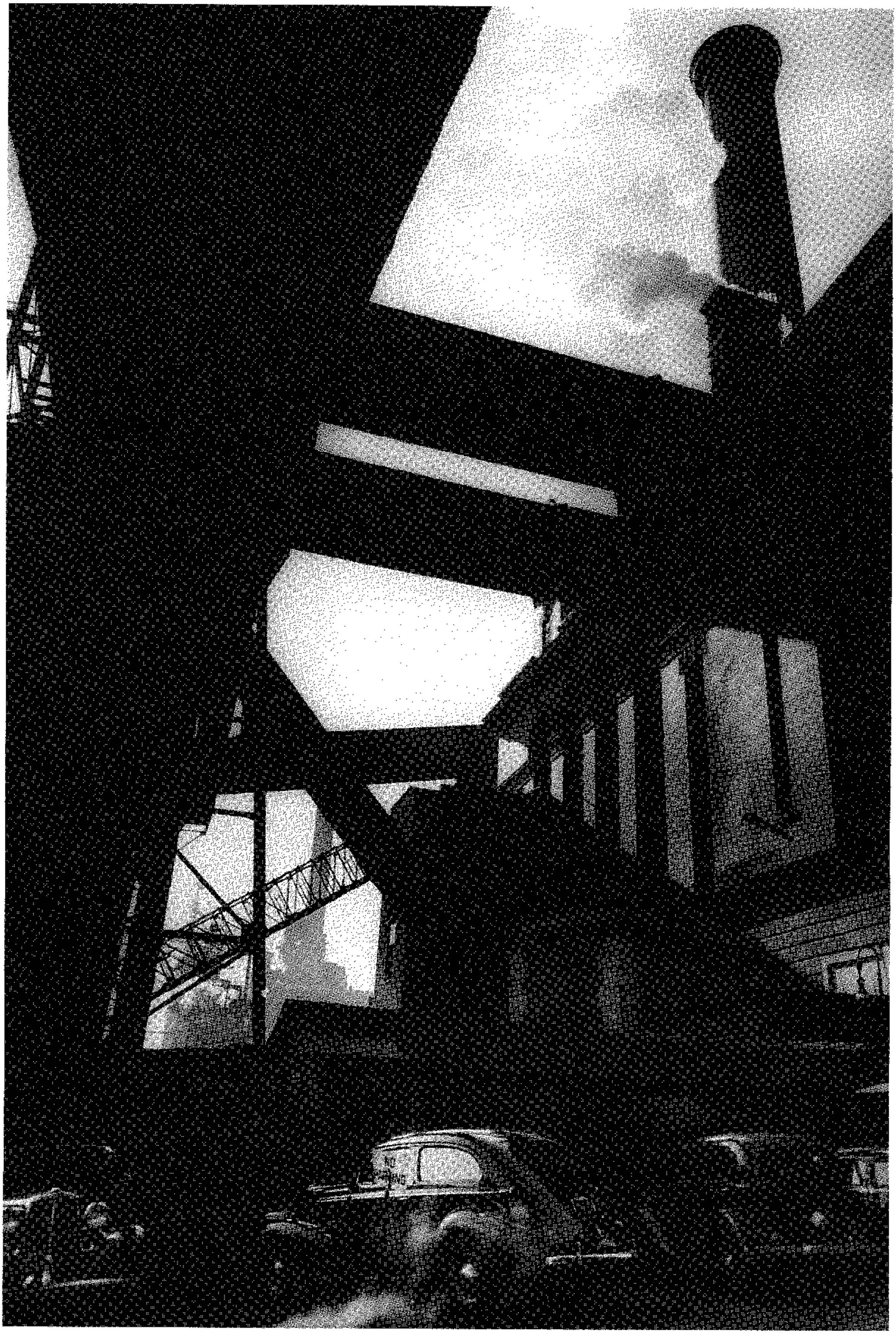
Saints for Sale, New York, 1932



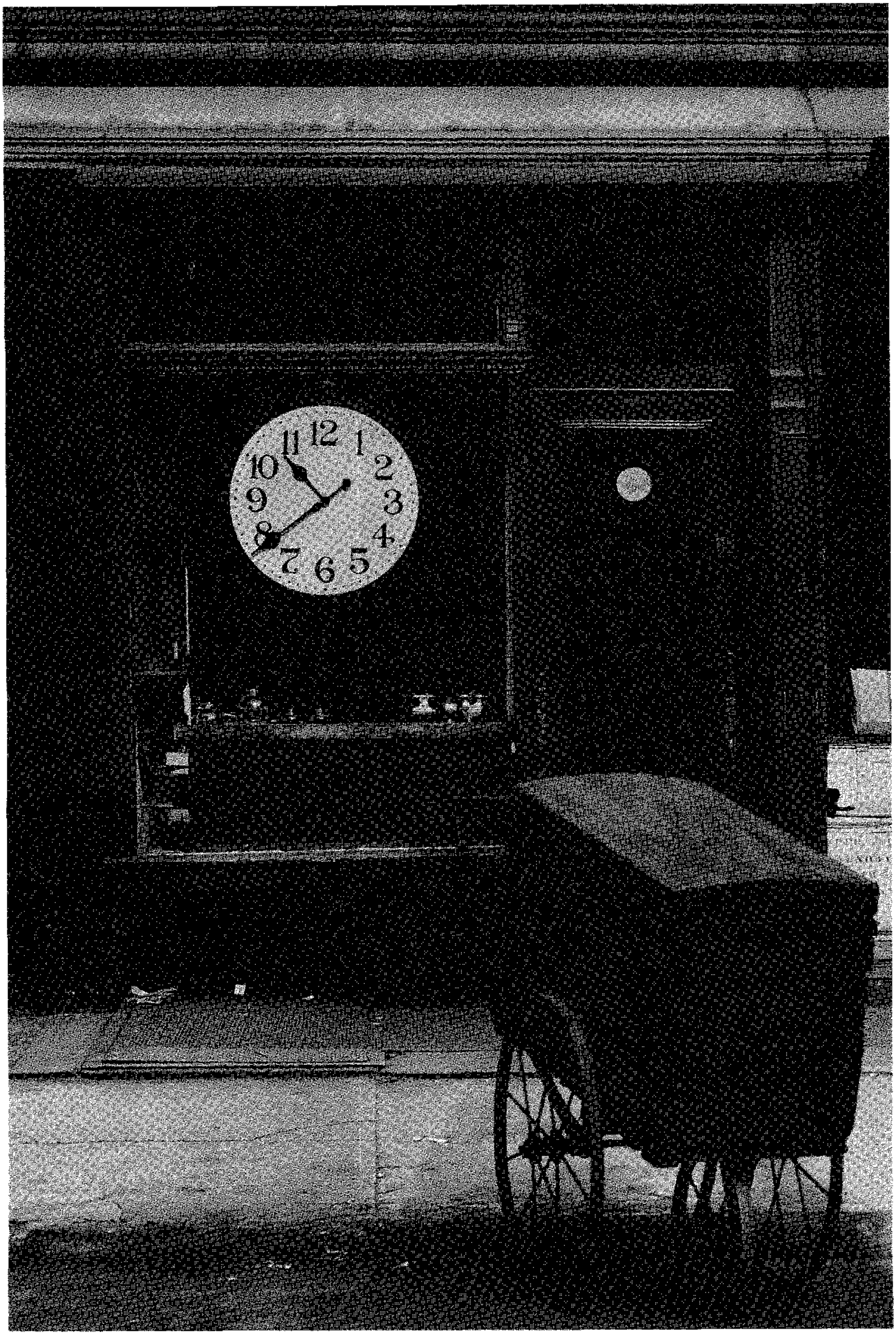
Fifth Avenue Houses, Numbers 4, 6, and 8, New York, 1936



Under the El at the Battery, New York, 1936



Consolidated Edison Power House, New York, 1938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Repair Shop, Christopher Street, New York, c. 1949

Treating Insanity Reasonably

Sally Satel

It's no favor to let thousands of former mental patients lead lives of desperation on the streets of New York. Here's a psychiatrist's plan to get them the care they need.

Juan Gonzalez, a 43-year-old Bronx man with a history of mental illness, thought he was under orders from God when he boarded the Staten Island Ferry in July 1986 and began slashing at the crowd with his sword, killing two and wounding nine. Two days earlier, doctors at Columbia-Presbyterian Hospital's psychiatric emergency room had examined Gonzalez and released him on his promise to seek outpatient care.

In the ensuing years, such incidents have become ever more familiar. Recent front-page murderers like Jorge Delgado, Christopher Battiste, and Kevin McKiever were all clinically psychotic when they killed; like Gonzalez, none was a stranger to the mental health system.

These people are the most horrifying legacy of deinstitutionalization, a process that shrank the population of New York State's mental hospitals from 93,000 in the fifties to 9,000 today. While many of those who left the hospital did not need to be permanently committed, a large subset of them proved unable or unwilling to continue their treatment and drifted into a life on the margins—a life of homelessness, addiction, and, in the worst cases, violence. An estimated 10,000 untreated mentally ill homeless today wander the streets of New York City. Additionally, as many as 10 percent of state prison inmates suffer from a serious psychotic disorder.

In the early days of deinstitutionalization, psychiatrists believed that voluntary treatment within the community was the best approach to virtually all mental illness. But voluntary treatment has proven to be far from a panacea, and most psychiatrists now agree that some patients must be forced to accept treatment.

New York State, however, makes that very difficult. Unless a patient is on the brink of violence—or has already acted violently—the state has very little ability to control him. Even weaker is the state's capacity to compel treatment for those who are profoundly disabled but not clearly dangerous.

It is time for New York to reform its policy toward the mentally ill. First, the state should make it easier to commit patients who cannot live on their own. Second, it should develop a system of compulsory "outpatient commitment." Third, it must improve the quality of services provided within the community, so that those with less severe illnesses can get the treatment they need.

New York State's mental hygiene code authorizes involuntary commitment of patients who have "a mental illness for which immediate . . . treatment . . . is appropriate and which is likely to result in serious harm to self or others." Although judges have interpreted this provision in different ways, the only people for whom it unambiguously allows commitment are those with a fully formed plan to kill themselves or others and those literally caught in the act.

Not surprisingly, admitting a resistant patient to the hospital is usually an uphill battle for psychiatrists. Dr. Michael Allen, who supervises the admission of psychiatric patients at Bellevue, says that whenever his psychiatrists pursue commitment, they gird for a struggle with the patient's lawyer and the judge who will preside over the hearing. Because many lawyers and judges have a profound mistrust of psychiatry, rooted in the ideology of the sixties, what should be a collaborative effort to arrive at a legal decision about what's best for the patient instead becomes an adversarial challenge, with the patient's lawyer arguing for his client's release. "Lawyers may view it as similar to a criminal proceeding, with the goal being to avoid incarceration, not to look out for the person's best interest," Allen says.

The judges who rule on commitment also view the hearings as if they were criminal trials, in which the patient must be afforded every opportunity to preserve his liberty. In this context, judges are often reluctant to rely on information from the patient's family, friends, or even his personal doctor—the people most familiar with the patient's pattern of deterioration. Those closest to a patient may know, for example, that he regularly becomes sleepless and agitated several days before a full-blown psychotic episode. But often he must advance to a stage of wild psychosis or violence before a judge will authorize involuntary treatment. "Judges have an aversion to weighing facts about the patient's clinical history," Allen says. "To them, this seems prejudicial." This attitude persists in spite of a recent ruling that allows judges to consider the natural course of an illness and the patient's history of failing to comply with treatment in commitment determinations.

Similarly, though some judges have interpreted the "dangerousness" standard for commitment broadly enough to allow hospitalization of patients whose self-destructive behavior falls short of attempted suicide, many have construed it narrowly.

The state should codify a more enlightened standard, joining 39 other states by adopting "grave disability" rather than "dangerousness to self or others" as the criterion for commitment. This standard allows involuntary hospitalization of mentally ill people who are at significant risk because they are neglecting their basic needs, including food, clothing, shelter, health, and safety.

Mr. B. thought the CIA was poisoning his food. Instead of eating, he began stuffing newspaper in his mouth, declaring: "The words will feed my soul."

For a vivid illustration of the need for such a standard, consider the case of Mr. B., a patient I treated as a resident psychiatrist several years ago. Mr. B., a homeless man living on the streets of Manhattan, suffered from schizophrenia. Emaciated and dehydrated, he refused to eat because he thought the CIA was poisoning his food. The owner of a local package store allowed Mr. B. to sleep in the basement for $5 a night, but Mr. B. couldn't afford to pay after he began using all his panhandled change to phone the White House operator and complain about the

CIA. He started sleeping on the freezing pavement outside the store; instead of eating, he began stuffing newspaper in his mouth, declaring: "The words will feed my soul."

Concerned, the store owner offered to take Mr. B. to the emergency room. When Mr. B. refused, the owner called the police as well as the psychiatrist on duty at the local hospital, asking them to take Mr. B. to the hospital. Was Mr. B. planning to kill himself or harm others? they asked. If not, they were powerless to do anything.

Mr. B. became suspicious of his benefactor and fled the neighborhood. His toes became frostbitten, and he wanted to see a doctor. He began limping to a local emergency room but became frightened and turned back when he decided that the doctors must be under CIA control.

Soon, Mr. B. collapsed in the street and was brought to a hospital, where doctors removed his gangrenous toes. Finally, in order to be closer to his son, he was transferred to the Connecticut hospital where I worked. Because Connecticut has a grave disability standard, the hospital was able to retain him for treatment. That Mr. B.'s deterioration had to reach such an extreme—and that he had to leave New York State—before he could receive the treatment he desperately needed is a tragic indictment of the state's mental health system.

A grave disability standard would be enormously helpful to emergency room psychiatrists seeking to help desperately ill patients. But in 1994, the New York State Legislature rejected a bill that would have written the grave disability standard into law. One of the chief opponents was the New York Civil Liberties Union, which charged that the new standard would be an unconstitutional abridgment of personal liberty. This argument is both legally and philosophically indefensible. The U.S. Supreme Court has never barred states from committing gravely disabled patients. And even John Stuart Mill, the father of libertarian thought, recognized that normal ideas of liberty do not apply to individuals whose state of mind is "incompatible with the full use of reflecting capacity." Freedom of choice is an empty notion for those whose minds are paralyzed by psychotic delusions.

Opponents of institutionalization contend that the problem is not the difficulty of hospitalizing the mentally ill against their will but rather the difficulty of obtaining meaningful treatment for the mentally ill within the community. This argument is half right. Not all patients need to be committed; some who are committed can eventually be released. But it is often impossible for patients to sustain the gains they have made in the hospital, whether they entered voluntarily or not, if they fail to complete their treatment after discharge.

Part of the problem is inadequate services, but at least as big a part of it is that many patients don't follow through on their treatment, and the state lacks the legal muscle to force them to do so. An estimated half of mentally ill patients fail to take their prescribed medications regularly; some never take them. Among the homeless, the rate of compliance is even worse.

The biggest obstacle is that the mentally ill often don't understand that they need to take their medicine. In a recent study published in the *Archives of General Psychiatry*, more than half of schizophrenic patients examined were either completely or largely unaware that they even had a mental disorder. Such individuals often follow a revolving-door pattern: when they go to the hospital, they quickly stabilize on medication, but after release they stop taking medication, deteriorate until they become overtly psychotic and ultimately dangerous, and are again committed to the hospital.

The state should have the power to force such patients to complete their treatment outside the hospital. Outpatient commitment, as the approach is known, would be consistent with the spirit of New York's mental health laws, which require courts to place patients in the "least restrictive clinical environment" suitable for their needs. Only if a patient violated the terms of outpatient commitment—that he take his medicine and see his psychiatrist or social worker regularly—would he face involuntary hospitalization.

Until 1994, New York was the only state where the law specifically barred compulsory treatment in the community. But the State Legislature has enacted a bill, sponsored by Senator Frank Padavan and Assemblywoman Elizabeth Connolly, creating a three-year pilot project to test outpatient commitment. Beginning in July 1995, the program will enroll patients about to be discharged from Bellevue who are "incapable of surviving safely in the community without supervision" and have been involuntarily hospitalized at least twice in 18 months after failing to complete treatment.

Although this pilot project is quite modest, it is a significant first step. Bills authorizing outpatient commitment statewide had regularly failed in previous years, the result of intense lobbying by civil libertarians and some groups representing former mental patients. Pilot status seemed to make the provision more palatable to such groups; the New York Civil Liberties Union took no position on the 1994 legislation. Others, however, opposed even this moderate measure. The Mental Health Association in New York State argued that involuntary services are more expensive than voluntary ones—a true but meaningless claim. The proper comparison is outpatient commitment versus expensive revolving-door treatment: repeated ambulance rides, emergency hospitalization, and occasional trips to jail.

Dr. Joel Dvoskin, an associate commissioner in the New York State Office of Mental Health, criticizes outpatient commitment on the grounds that its effectiveness results from the intensity of the treatment, not its compulsory nature. He argues for more intensive case management in community-based programs.

But, as Dr. Luis Marcos, New York City's commissioner of mental health, recognizes, the mentally ill need both better case management *and* compulsion. Some patients, he has said, simply need the "weight of the court and the knowledge that if they don't take their medication, they would end up back in the hospital."

The most irresponsible criticism of outpatient commitment comes from an Albany-based group, Disability Advocates. Its critique states: "African-Americans and Hispanics are more likely to be subject to the force of outpatient commitment than white persons." This racialist argument ignores the fact that outpatient commitment is in the interest of the patients themselves.

Even John Stuart Mill recognized that normal ideas of liberty do not apply to individuals whose state of mind is "incompatible with the full use of reflecting capacity."

Studies have shown that, once treated, patients often realize that coercion was in their best interest. The danger of going untreated is palpable. A recent study published in the journal *Hospital and Community Psychiatry* found mental patients four times more likely to be victims of homicide and three times more susceptible to accidents than the general population.

On one topic, supporters and critics of coerced treatment both agree: Community-based treatment programs in New York State are woefully inadequate. The State Office of Mental Health estimates that one-third of all discharged patients are lost to the system, a euphemism for back on the street or in prison. While the number of beds in state psychiatric hospitals has declined by about 60 percent since the early eighties, the number of state prison cells has more than doubled.

The state needs comprehensive services for the seriously mentally ill—aggressive outreach to bring people into the mental health system, greater staffing of crisis centers in emergency rooms and outpatient clinics, and supervised housing and treatment programs. Ideally, social workers, under the supervision of psychiatrists, should serve as case managers, taking full responsibility for eight to ten patients, getting them the treatment they need, and monitoring their progress daily. If a patient has a track record of poor compliance with treatment, his caseworker could invoke outpatient commitment. Such a system functions well in Massachusetts, Michigan, New Hampshire, Wisconsin, and elsewhere.

In New York, the State Office of Mental Health hopes to initiate a case-management service in the form of a managed-care network serving some 35,000 severely mentally ill recipients of Medicaid. The program would guarantee access to housing programs, social workers, and outpatient services. But because it is designed for voluntary patients only, it would probably be ineffective in serving the severely disturbed people currently on the streets, who are notoriously resistant to treatment.

Once treated, patients often realize that coercion was in their best interest.

Currently, in New York, the severely mentally ill find themselves in the center of a vicious fiscal cycle. Albany is shutting down mental hospitals—by 1999, it plans to close 5 of the 22 it currently runs and shrink most of the others, reducing the number of beds from the current 9,000 to 6,000. Under the Community Mental Health Reinvestment Act of 1993, the state plans to shift about $58,000 into community care for each hospital bed it eliminates.

But the money that is to become available, when compared with what the state already spends on community care, is just "a drop in the bucket, assuming it even hits the bucket," according to a policy analyst in the state government. The Office of Mental Health plans to spend $790 million on outpatient care in 1995; reinvestment will free up an additional $40 million. The analyst estimates that the state needs at least $400 million more to create an outpatient system like those that have been successful in other states. This may be an overstatement: many of the programs the state supports simply don't work, so it could make substantial improvements by spending existing funds more wisely. The election of a new governor committed to cutting taxes may force the state to find ways of making better use of the money it has. It's indisputable, however, that effective, intensive treatment is quite costly.

Moreover, the success of the Reinvestment Act depends on the timely closing of empty hospitals. Because hospitals are major employers in small upstate communities, local politicians and unions fight hard to keep them open. The Gowanda Psychiatric Center near Buffalo had been scheduled to shut down several times beginning in 1991 but was not finally padlocked until April 1994, after a long and expensive death watch. The state spent $2.9 million in 1993 to keep the staff and only 14 patients on the premises.

The need for more services should not obscure the need for effective laws allowing psychiatrists to treat the seriously mentally ill against their will. Reducing the number of hospital beds makes sense only if doctors can compel their patients to complete treatment in the community. If outpatient commitment becomes a real option, 6,000 beds should be enough to serve those who truly need to be institutionalized. If it does not, the state will have to repopulate its mental institutions or else continue allowing the homeless mentally ill to wander the streets, endangering themselves and, in some cases, others.

Civil libertarians and some mental health advocates argue that current law is fine; New York State just needs more community services. In truth, the state needs more laws *and* more services. Today, thousands of people with severe mental illnesses roam the streets of New York, their "right" to liberty intact. But the freedom to be crazy is no freedom at all, as many of these people—once treated—will attest. ●

Government by Subterfuge

Michael S. Gruen

New York officials routinely concoct complex financial schemes to evade the State Constitution and frustrate the will of the voters. Where are the courts when these constitutional rights are imperiled? All too willing to go along.

Governing New York is an even more complicated business than it need be, because New York's leaders often resort to complexity as a stratagem for evading constitutional limitations on their authority. Both the State Constitution and the City Charter contain numerous provisions designed to ensure that government handles the people's finances fairly and responsibly, and that the people have ample opportunity to participate in decision-making on important financing and land-use issues. The state can't go into debt without voter approval, for example; the city can't sell its real estate without a public auction; neither the city nor the state can grant special tax exemptions to favored corporations or institutions. But politicians have found devious ways to do all these forbidden things, and New York's courts have consistently, if sometimes reluctantly, acquiesced in their schemes.

Even though officials sometimes have the best intentions when they try to work around the law, the end never justifies the means in such matters. When politicians undermine the Constitution, even in pursuit of worthy goals, they invariably undermine public confidence in government.

Consider a representative selection of these subterfuges, most of which involve public authorities, nominally independent corporations created by the state, like the Urban Development Corporation (UDC). Typically, the UDC or another authority will act as middleman, conducting transactions that would be illegal if the city or state carried them out. These make a mockery of the legal protections that New York's voters have enacted to ensure that the business of government is conducted democratically.

Start with an example I know especially well, because I am a lawyer representing the East 13th Street Community Association, a group of neighbors who oppose construction of a homeless housing facility in Manhattan near Union Square. (The Manhattan Institute, which publishes *City Journal*, has filed a friend-of-the-court brief in opposition to the facility.) New York City and State and the UDC made an agreement under which the city invited the UDC to condemn a city-owned property and to pay the city $1 for it. The UDC then conveyed the property to a developer, which the city designated, again for $1. That developer is a nonprofit organization called Housing Enterprise for the Less Privileged (HELP), founded by Andrew Cuomo, the former governor's son, and now headed by the younger Cuomo's sister, Maria Cuomo Cole.

The city does not really want to give away a valuable piece of Manhattan real estate for only $1. So in exchange for the property, HELP has agreed to construct a commercial and retail building on an adjacent, city-owned lot at an estimated cost of $4 million.

Why didn't the city simply sell the property to HELP for $4,000,001, with the same result and much less paperwork and administrative expense? Because doing so would have violated the City Charter. The Charter generally requires the city to auction its property in order to avoid ill-considered or politically motivated sales below market value. It also requires an appraisal and a time-consuming public review process, the Uniform Land Use Review Procedure.

If politicians want to make sure that a sale goes to a particular developer, allowing others to bid on it is risky. Hence the scheme of pretending that the whole matter is beyond the city's control by erecting the facade of UDC condemnation. Everyone involved refers to this as a "friendly condemnation," with the UDC being "invited" to condemn the property: it never would have occurred without the city's instigation.

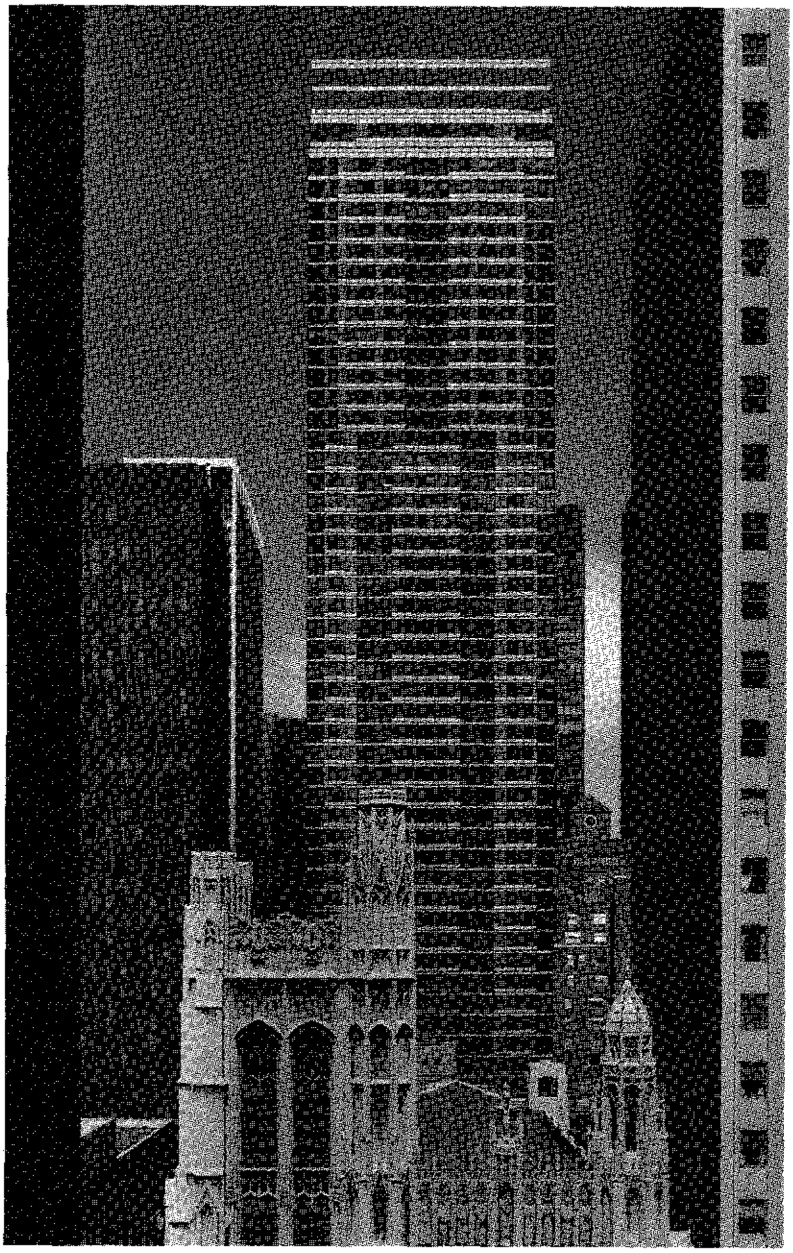
Why didn't the city simply sell the property, with the same result and much less paperwork? Because doing so would have violated the City Charter.

One suspects that the city is losing money on the deal. Although the nominal price is $4,000,001, the city is contributing half the cost, making the real proceeds only $2 million and change. The property HELP is taking over constitutes half of a lot valued in 1987 at $18 million. Even HELP acknowledges that it may be paying less than fair market value for the property; without an auction, there is no way for taxpayers and voters to know for sure. And the UDC is involved in "friendly" condemnations in no fewer than 15 similar deals with the city for homeless-housing programs.

Thus far, the courts have approved this deal, designed to subvert not only the City Charter's protection against improvident sales of city property but also its guarantee of citizen participation through the land-use review process. An appellate court ruled that the UDC "condemnation" insulated the transaction from challenge under the Charter. The Court of Appeals (New York's highest court) affirmed the decision on procedural grounds, leaving the substantive issues unresolved.

Another example of government by subterfuge is the story of the old Commodore Hotel—now the Grand Hyatt—next to Grand Central Terminal. In the mid-seventies, the hotel had closed and was disintegrating. Its owner, a subsidiary of the bankrupt Penn Central Railroad, owed some $10 million in property taxes. Because of pending bankruptcy proceedings, the city could not foreclose on its tax lien, perhaps for years.

So the city hatched a plan, which the Court of Appeals later described, with some restraint, as "complex." A private developer, Wembley Realty, would buy the hotel from Penn Central for $10 million; Wembley would then sell the building to the UDC for $1; the UDC would lease the building back to Wembley for 99 years; the rent would be payable to the city rather than to the UDC; and, at the end of the lease, the city would get title to the property. Under the provisions of the law that created the UDC, the authority's title to the hotel would exempt it from city property tax. After 40 years, Wembley's annual rent payments to the city would reach the level the company would be paying in property tax if it owned the building.



CERVIN ROBINSON

A special tax break financed Museum Tower.

Why would Wembley pay $10 million for a hotel, then sell it for $1? Because a long-term exemption from property taxes, which the firm effectively received, made the up-front loss worthwhile. One small problem: The State Constitution prohibits the city from granting special tax breaks like this. Any exemptions must be available to everyone meeting standard qualifications.

Yet the Court of Appeals upheld the scheme. Reason: "The property will obtain tax-exempt status not by any claimed or alleged invalid legislation enacted by the City Council," the court explained, "but rather by virtue of the purchase of the hotel by the UDC." The reality, however, is that the UDC could not have purchased the hotel for $1—Wembley would not have sold it—had the city not consented to waive its $10 million tax lien and to forgo taxes for 99 years. The city, in other words, sold a tax concession; the UDC's involvement was no more than window dressing for what would otherwise have been an unconstitutional transaction.

Soon after the Commodore Hotel deal was done, the State Legislature concocted another special tax exemption, this time to benefit the Museum of Modern Art, which faced financial problems and needed additional space. MoMA owned several brownstones west of the museum building. It wanted to acquire additional property and then develop the entire site to provide both exhibition space and a steady source of income. The city, state, and MoMA developed what the Court of Appeals described as a "highly intricate and imaginative scheme" to finance a 50-story Museum Tower housing museum facilities on the first six stories and condominium apartments on the other floors.

But how to ensure a flow of income to the museum? Condominium owners don't pay rent after all—but they do pay property taxes. MoMA needed a way to tap the taxes for itself. The city obliged: it would exempt the property from taxes but require the condo owners to make tax-equivalency payments to the museum.

While the city was willing to allow the exemption in this particular case, neither it nor the State Legislature wanted to abolish the rule that even charitable organizations must pay taxes on property they use for commercial purposes. But, as in the case of the Commodore, officials came up against the constitutional prohibition against special tax exemptions. The government could not bestow a tax break upon this project alone.

Most recently, the Legislature has authorized the sale of $7.1 billion in bonds, all through public authorities and without voter approval.

Or could it? The Legislature passed a law authorizing the creation of local trusts to help cultural institutions build combined cultural and commercial facilities. The trusts may condemn the required property, construct the buildings, and sell them to the cultural institution and the cooperating commercial developer. Once a trust has held title, however briefly, the property is forever tax-exempt. But the owners of the commercial part of the building must pay the trust the sum they would otherwise pay in taxes. The trust then gives the cultural institution enough of this money to defray its operating costs on the new structure, with the remainder going to lenders and the city.

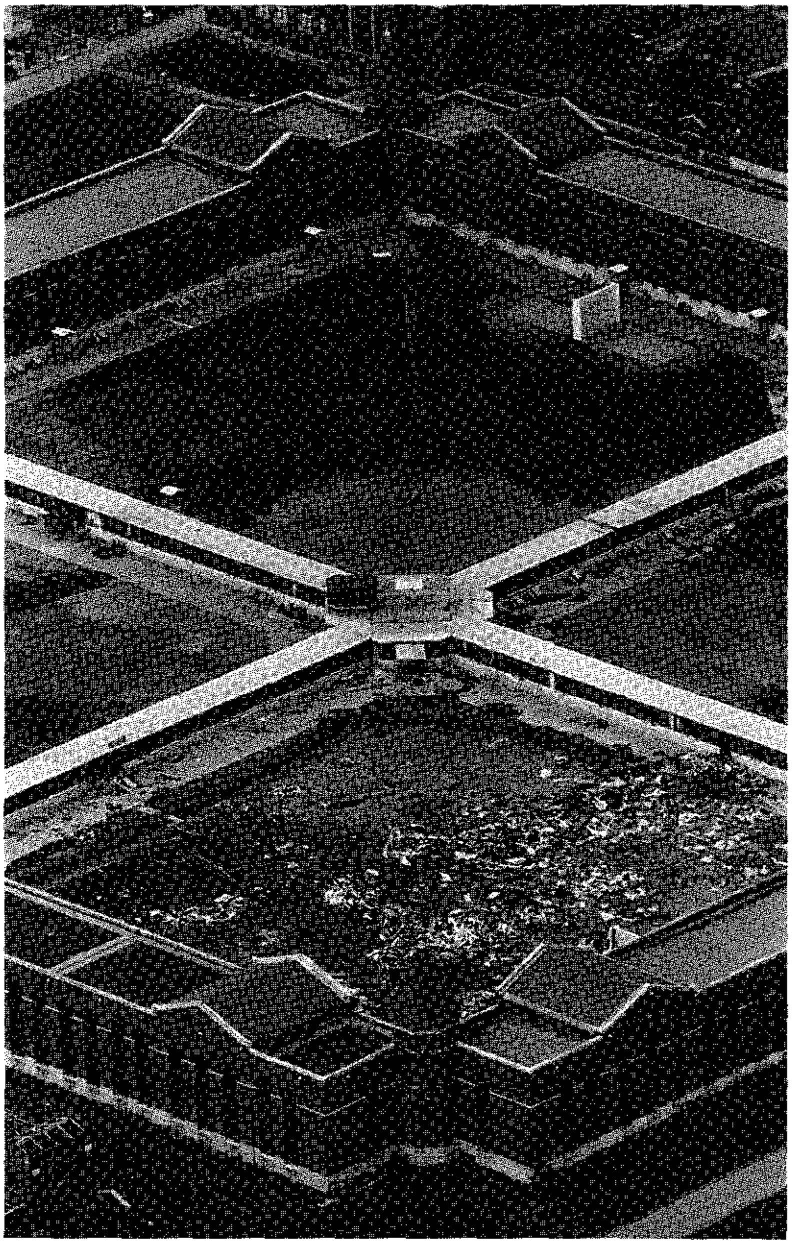
To make certain that only MoMA would qualify, lawmakers strictly limited the creation of the new trusts to cultural institutions that, first, have owned contiguous tax-exempt property in excess of 50,000 square feet for at least five years and, second, meet high minimum admissions requirements—in New York City, average annual admissions of at least 500,000 for at least five years.

The Court of Appeals held the scheme constitutional because other institutions *might* qualify in the future. Two dissenting judges, however, would have quashed the law as "gimmickry" designed to conceal a subsidy from the public and irrevocably commit long-term support to a single institution. The dissenters recognized that the "objective" qualifications were expressly designed to limit the benefit to a single institution.

Deals like these illustrate well the pervasive practice of cooking up elaborate schemes to subvert basic constitutional restrictions. But these examples look like child's play when compared with the way the state escapes legal limits on its ability to borrow money.

The State Constitution provides that no long-term debt may be contracted "by or in behalf of the state" without voter approval by referendum. But New Yorkers are often skeptical of the state's borrowing proposals. Of ten bond issues totaling $10.7 billion that have appeared on the ballot in the past 20 years, only five, amounting to $6.5 billion, won approval. But the state has managed to borrow another $20 billion, and plans to borrow an additional $7.1 billion, by evading the constitutional limitation.

The trick is "backdoor financing." A public authority, such as the UDC or the Thruway Authority, does the borrowing and declares that only it, not the state, is liable for the debt. Then, through a complicated set of transactions, the state actually pays off the debt. In one well-known scheme, the UDC and the Thruway Authority sold $230 million in bonds and used the proceeds to purchase Attica prison and Interstate 287 from the state. The authorities then



BILL RAY, LIFE MAGAZINE, COPYRIGHT TIME INC.

Attica prison: "sold" in a debt-floating scheme.

leased the prison and the highway back to the state; the Legislature fixed the "rent" under the "leases" at an amount equal to the annual debt service obligation. In other words, the state is paying off the debt under the pretense of paying rent.

The courts have upheld such borrowing on the grounds that because the state is not *legally* obligated to pay, there is no incurrence of debt "by or in behalf of the state." The constitutional requirement of popular approval, therefore, does not apply. But if the state defaulted on its "rent" payments, bondholders would take over the prison and the highway—a practical impossibility. The state would never allow a default.

A variation on the theme earmarks certain tax revenues for repayment of bonds. In 1990, the Legislature created the Local Government Assistance Corporation and authorized it to borrow $4.7 billion to finance certain operating expenses of local governments. Again, the scheme relied on the fiction that public approval of the bonds was unnecessary because only the corporation, not the state, is responsible for repaying the debt. But where will the corporation get the money? From a fund consisting of one-fourth of the revenues from the state's 4 percent sales tax.

Each year, in theory, the Legislature has the option of appropriating or not appropriating the money. But, in practice, everyone recognizes that a breach of faith with the bondholders—a failure to continue appropriating the funds—would destroy the state's credit rating. So, in reality, there is every bit as much assurance that the state will pay the debt as there would be if the state had incurred it directly.

From Albany's point of view, it makes no difference whether the debt service payments go directly to the bondholders or reach them through the Local Government Assistance Corporation. To the public, however, it makes a big difference. Had the deal been done in a straightforward manner, the voters would have had the opportunity to decide whether they wanted to burden their children and grandchildren with another $4.7 billion in debt.

Most recently, the Legislature has authorized the sale of $7.1 billion in bonds for improvement of transportation facilities, all through public authorities and without voter approval. In June 1994, the Court of Appeals upheld the plan.

New York City, too, has used similar subterfuges to evade limits on its debt. The State Constitution prohibits a municipality from incurring debt exceeding a given percentage of its property tax base—10 percent in the case of New York City. When the city ran up against that limit in the early seventies and faced an unprecedented fiscal crisis, the Legislature sought to evade the constitutional prohibition by establishing the New York City Stabilization Reserve Corporation (SRC), whose sole function was to issue bonds, paying the proceeds to the city. Each year, the city would supposedly have the option of paying the debt service or not. But this choice was a fiction: if the city chose not to pay, the state would simply divert to the bondholders local support funds that would otherwise have gone to the city. Either way, the city was effectively liable for the debt. The use of the SRC as an intermediary to transfer funds was nothing but a pretext for evading the debt ceiling.

New York's public officials have seemed to view the State Constitution not as a limit on their power but as a challenge to their talents for evasion.

The Court of Appeals upheld the scheme because the enabling act declared—in denial of the practical reality—that the bonds of the SRC "shall not be a debt of either the state or the city, and neither the state nor the city shall be liable thereon." Therefore, the court held, the city could not be exceeding its constitutional debt limitation. Three of the seven judges, however, recognized that the plan was "a barely disguised technique for debt ceiling avoidance" that "violates the spirit and tenor" of the Constitution.

The SRC never sold any bonds—by the time the court upheld it in May 1975, the fiscal crisis had exploded. The Legislature created a new agency, the Municipal Assistance Corporation (MAC), whose structure was similar. But the amount of debt increased dramatically. The SRC had been authorized to borrow $520 million in 1974. MAC was initially authorized to borrow $3 billion, a figure that ballooned to $10 billion by 1980. As of 1980, MAC's legislatively established borrowing limit alone exceeded the city's constitutional debt limit by almost $2 billion. The limitation on municipal borrowing had lost its meaning.

Over and over, New York's public officials have seemed to view the State Constitution not as a limit on their power but as a challenge to their talents for evasion. When officials flout constitutional limits, they threaten the most fundamental principle of American democracy—that governmental authority comes from the people. When the people enact restrictions on governmental conduct, public officials and the courts should honor them—not in the breach by legalistic sleight of hand but by respecting the purpose for which they were adopted.

How can New York develop an honest government, one that respects the limits of the State Constitution and the City Charter? Nothing would help more than if Governor Pataki and

Mayor Giuliani repudiate the idea of government by subterfuge, refusing to enter into deals that serve immediate political goals at the expense of the government's integrity.

Greater public awareness would help prevent future subterfuges. We should remember that the purpose of these Byzantine schemes is precisely to obfuscate. They succeed because the general public does not understand—and the press does not spotlight—either the schemes or their consequences, and so the public is hardly in a position to fight them by voting out officials who adopt them.

The courts must become far more vigorous in carrying out their fundamental responsibility to enforce constitutional limitations on governmental authority. The subterfuges I have described would be impossible without judicial laxity. When it comes to individual civil rights like free speech and due process, courts are generally vigilant in defending the Constitution when the other branches of government seek to evade it. They should be no less so when the issue is the people's political right to control their government, limit its powers, and hold it accountable.

Sometimes judges succumb to the pretext that a crisis justifies extraordinary measures—though it is precisely in times of crisis that constitutional limits on government are most crucial. Eventually judicial laxity becomes endemic: legal precedent from crisis-inspired decisions and a natural reluctance to upset the ship of state combine to inhibit the judiciary from overruling the other branches of government when they act outside their legally defined roles.

Of late, New York's courts have at least begun to express some embarrassment at their willingness to allow the subversion of the Constitution. In upholding the recent $7.1 billion transportation bond issue, the Appellate Division acknowledged: "Undoubtedly, there is a certain intrinsic validity to plaintiffs' contentions that the challenged financing schemes are little more than carefully tailored mechanisms to circumvent the referendum requirements of [the] New York Constitution. . . . Likewise, there is a disturbing correctness to their argument that . . . inasmuch as . . . default would affect the state directly by impairing its credit and hampering its ability to issue bonds in the future, the state practically and economically is obligated to make payment." The court nevertheless concluded that precedent forced it to uphold the borrowing.

The Court of Appeals agreed, adding: "If, as plaintiffs urge, modern ingenuity, even gimmickry, have in fact stretched the words of the Constitution beyond the point of prudence, that plea for reform in state borrowing practices and policy is appropriately directed to the public arena"—that is, the constitutional amendment process. But, in fact, the current limits on debt are contained in constitutional amendments passed in response to earlier subterfuges. If the courts continue shirking their responsibility to uphold the Constitution, further amendments will only tempt officials to brew new schemes to evade them.

But happily, in the 1993 case of *Schulz* v. *State*, the Court of Appeals dealt a potentially crucial setback to government by subterfuge, giving voters the power to file suits challenging backdoor financing through public authorities. Before this case, rules limiting "standing" all but precluded direct legal attacks on state financing methods.

In the *Schulz* case, the court ultimately allowed the borrowing to go through because the plan had already progressed so far that the judges believed overruling it would severely disrupt the financial markets. This suggests one solution: the courts could expedite cases challenging large capital projects or financing schemes so that judges can address the legal issues without fear that enforcing the Constitution would lead to financial or political chaos.

However they do it, the courts must get serious about enforcing the limits on government built into the State Constitution and the City Charter. Doing so would promote both the long-term health of the state's finances and public confidence in its institutions of government. ◆

Urbanities

The Robber Barons' Bum Rap

Maury Klein

Too many generations of Americans have swallowed whole Matthew Josephson's portrait of the great nineteenth-century entrepreneurs as Robber Barons—rapacious predators who grew rich through tactics that were unethical at best, illegal at worst, and contrary to the public interest in any case. They bilked companies, corrupted public officials, and defrauded rivals in their quest for gain. But as history *The Robber Barons* (1934) is no more accurate than a Norman Rockwell painting—a kind of Norman Rockwell in reverse. Josephson was less a historian than a moralist who cared less about the accuracy of the story than about the ideological message he saw in it.

The men Josephson caricatured were in fact the creators of the industrial system that gave the United States the most powerful and dynamic economy in the world. They were masters of organization—visionaries and risk takers who thought and acted on a grand scale. Though they amassed the largest private fortunes ever known, what drove them was the game itself. "I do not love the money," insisted Philip D. Armour, the meat-packing magnate. "What I do love is the getting of it. . . . What other interest can you suggest to me? I do not read. I do not take part in politics. What can I do?"

The game took place on what may have been the most open playing field ever known. During the Civil War, once the South had seceded, Republicans took control of Congress and passed a stream of long-stalled legislation crucial for economic development: a National Banking Act, a tariff act, a Homestead Act, a Pacific Railroad Act, and more. When the war ended, land, resources, and cheap labor abounded, while the political and legal system offered fewer restraints to individual action than existed anywhere else on the globe. Never before—or (arguably) since—have opportunities been so ripe for those capable of mobilizing capital and organizing large enterprises.

The entrepreneurs who came to dominate this scramble were to the American economy what the Founding Fathers were to the political system. They also transformed New York into the financial, commercial, corporate, social, and cultural nerve center of the nation. Among the hundreds of ways to look at New York and what it reflects about the American experience, one important if overlooked way is to see it as the largest living monument to the misnamed Robber Barons.

As individuals, the entrepreneurs were a varied lot whose personalities and tangled legacy of creativity and destructiveness defy easy generalization or glib labels. Cornelius Vanderbilt, who created the first fortune topping $100 million, was as ruthless and personally unpleasant a man as they come, but no man did more to establish New York's commercial primacy. Born on Staten Island in 1794, a farmboy so ill educated that he never learned to read and could spell words only phonetically, Vanderbilt borrowed $100 from his mother to buy a small boat and hired himself out as a ferry service to New York City. From that modest beginning, he fashioned a career as a designer and operator of boats, first on the Hudson River, then on Long Island Sound and the coastal route to the Isthmus of Panama.

Snubbed by polite society, the coarse, profane, tobacco-stained Commodore (a name he acquired as a steamboat owner) erected a mansion on a corner of the old family farm. No one doubted his ability or his toughness; when two associates tried to snatch one of his companies in his absence and enrich themselves from it, he roared at them, "You have undertaken to cheat me. I won't sue you, for the law is too slow. I'll ruin you." And indeed he made them suffer. In all these endeavors he gave the country a short course in the rules of cutthroat competition: he operated efficient, well-run companies, sold out to competitors for a fat price that amounted to greenmail, and

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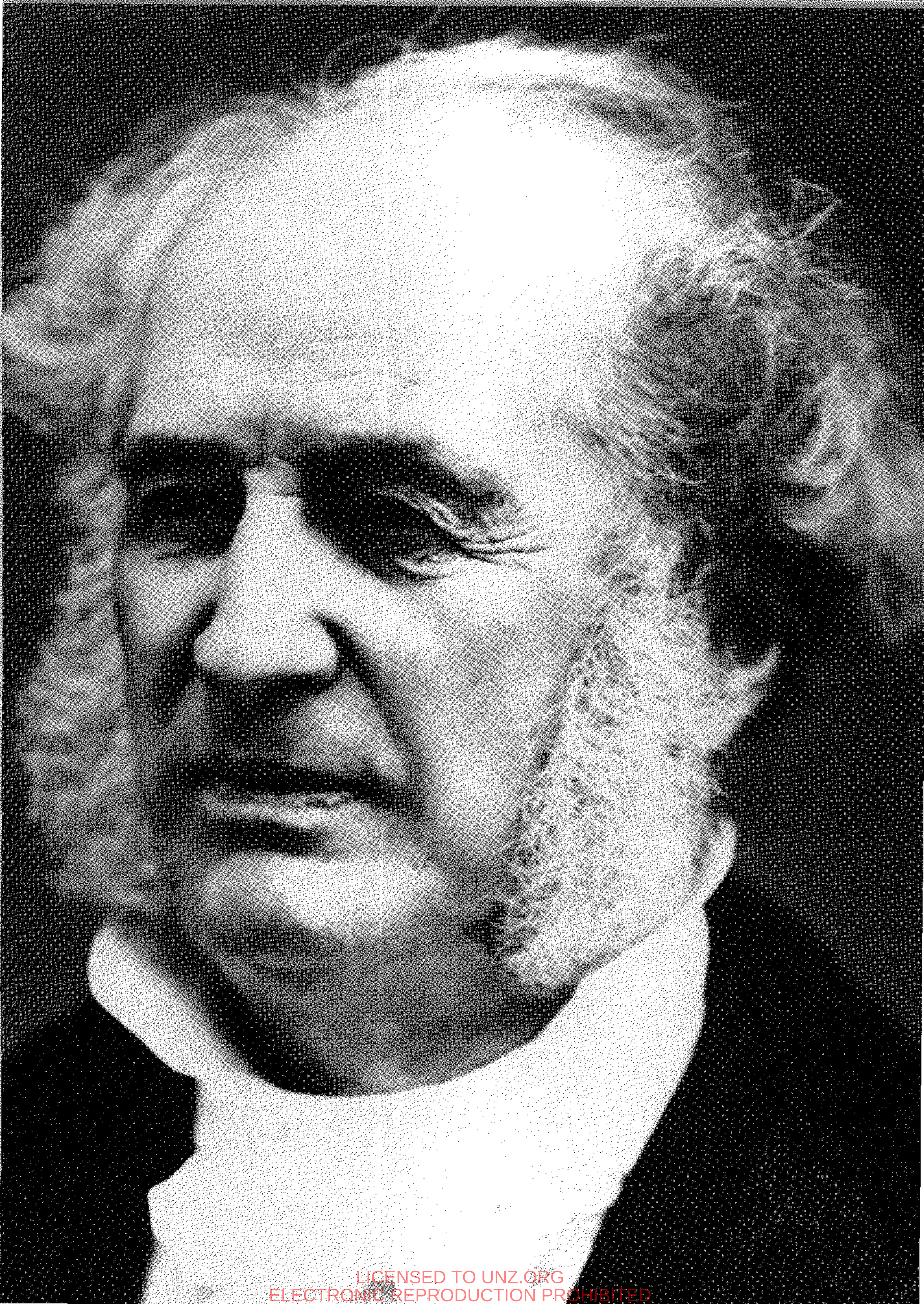
Cornelius Vanderbilt



then entered a brand-new arena with yet another sleekly efficient competitive venture.

At 66, Vanderbilt had accumulated a fortune of $20 million and might have retired to a life of luxury. Instead, he hurled his indomitable energy into the two most vital arenas of American economic development: railroads and the telegraph. In both cases, he applied his familiar formula of competing to win with the best-run company. "My idea of a railroad is this," he once barked at a public hearing: "If you have been running a road and you spend nine or ten millions to run it, if I cannot do it for eight, and do it as well, I am ready to go from the road; that is profit enough for me."

Between 1862 and 1869, the Commodore did it well enough to gather up a motley assortment of 17 local rail lines and forge them into the mighty New York Central system running between New York and Chicago, second only to the Pennsylvania Railroad in strength and prestige. He did this by ruthlessly watering the stock of the companies he bought, then increasing their value through unified management, reduced costs, and improved efficiency. In 1871, he gave New York a splendid new railroad station called Grand Central Depot. Applying the same formula to the telegraph industry, Vanderbilt bought control of giant Western Union, squeezed the water out of its stock, bought up smaller competitors, and imposed his own brand of efficiency on the operation.

"His ambition is a great one," admitted a grudging Charles Francis Adams Jr. "It seems to be nothing less than to make himself master . . . of the great channels of communication which connect the city of New York with the interior of the continent, and to control them as his private property." The Commodore was still hard at the task when death claimed him in 1877.

Nine years later, a Boston manufacturer named Edward Atkinson tried to put Vanderbilt's achievement in perspective for some critics who complained that Vanderbilt grew rich while his workers got low wages. Admitting that Vanderbilt made about 14 cents profit on every barrel of flour shipped over his railroads, Atkinson observed that in the process he also greatly lowered the price of flour. "Did Vanderbilt keep any of you down," he demanded, "by saving you $2.75 on a barrel of flour, while he was making 14 cents?"

Jay Gould, whose swashbuckling market manipulations and titanic battles for corporate control earned him the reputation as the most hated man in America, had much in common with his business enemy Vanderbilt. Born on a Delaware County, New York, farm in 1836, he overcame a frail, sickly constitution to become the quintessential Robber Baron. He was so intelligent, so strikingly original, and so devious that Josephson dubbed him "Mephistopheles." His positive achievement was as full as it was complex. No one developed more of the American West than Gould did through his investments in railroads, mines, real estate, timber, and other industries.

After an early career in tanning, Gould came to Wall Street to try his luck, bringing little capital and no contacts but a formidable intellect. All his life he remained an outsider to the establishment, forging his independent way backed by a corps of trusted followers, whom he led in a soft-spoken, self-deprecating style. Once, late in life, he told a reporter that he was a mere passenger on the vehicle of his enterprises; but those in the know never doubted who was at the wheel, even when the enterprises grew immense.

Between 1874 and his death in 1892, Gould reshaped even more dramatically than Vanderbilt the two key sectors of transportation and communication. He reorganized the floundering Union Pacific Railroad and put it on solid footing, then bought into the small Missouri Pacific Railroad and used it as the nucleus for a giant rail system through the largely undeveloped Southwest. His forte was developing not only railroads but the regions through which they ran. Unlike many men of

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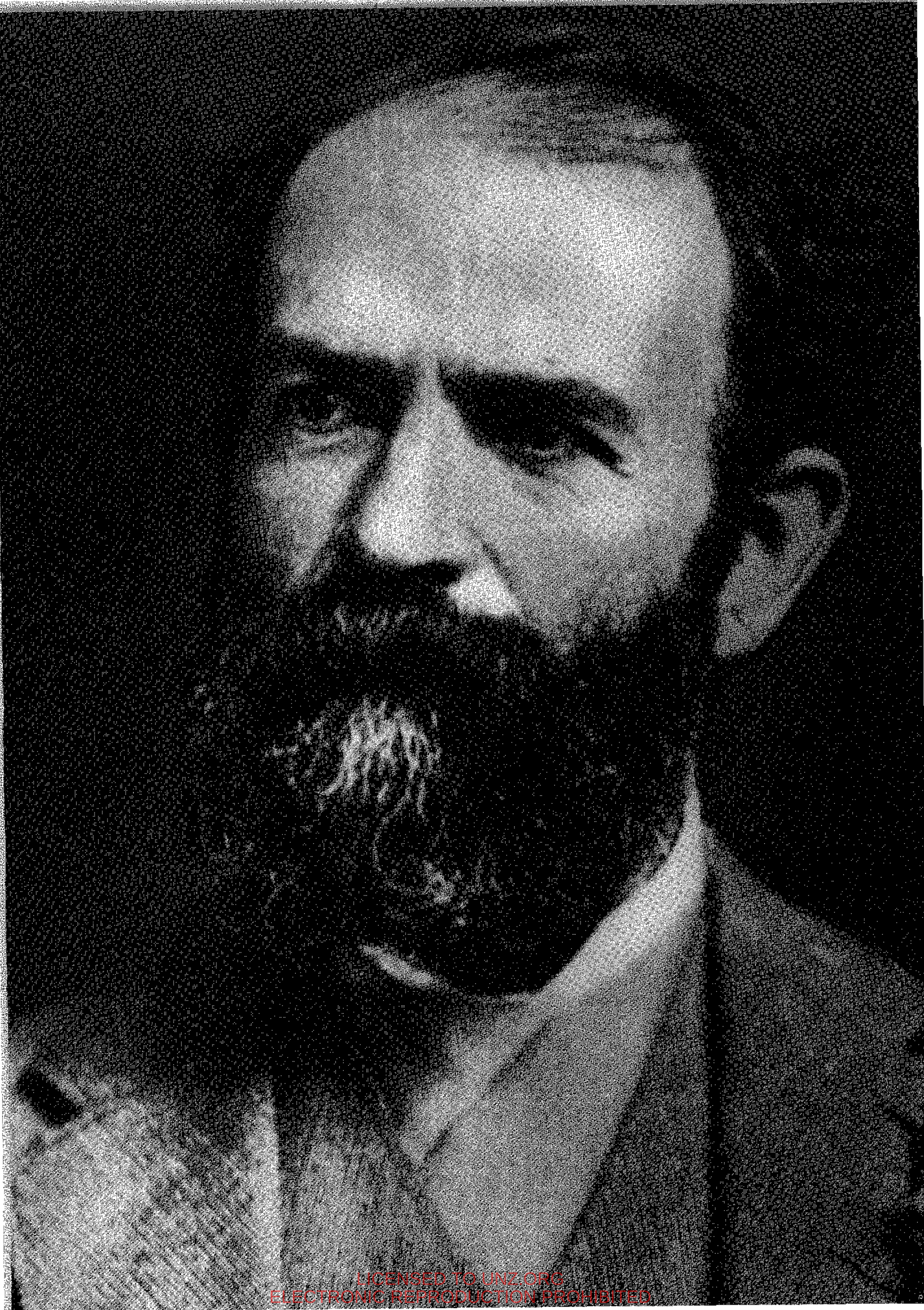
Jay Gould



wealth, he put none of his money into safe investments like government bonds but instead committed it to the development of mines, stockyards, industries, timberland, and other sources of freight traffic along the roads he controlled.

Gould, observed General Grenville M. Dodge, a railroad surveyor and financier who knew him well, "will stand in history as having risked and planted his millions in developing a new country, while others merely risked and planted their millions in a country already developed . . . where there was no risk as to returns."

During the 1880s, Gould wrested control of Western Union from Vanderbilt's son William and imposed on it no less efficient a management than the Commodore's. He also turned his attention to New York's troubled elevated railroads. Always a master at the salvage of floundering properties, he bought control of the rival el lines and gave them the most efficient (and profitable) management they had ever had. The elevated roads proved invaluable in New York's rise to commercial and financial leadership.

Gould was an innovator in everything he touched, whether on Wall Street, in his many and far-flung enterprises, or in the courts, where he became one of the nation's chief litigants (he was a pioneer in using the law to deceive, delay, and obfuscate, and in the bargain helped elevate Shearman & Sterling to one of the New York's leading law firms). No less protean an innovator was John D. Rockefeller, one of the first entrepreneurs to be excoriated by critics. Born on a farm in upstate New York, he migrated to Cleveland in 1853 at age 14. There he entered a firm that bought and sold commodities on commission. This was an emerging business in America, one made possible by the railroad and the telegraph. Rockefeller recalled the value of this experience to his early education: "We would receive, for example, a shipment of marble from Vermont to Cleveland. This involved handling by railroad, canal, and lake boats. The cost of losses or damage had to be somehow fixed between these three different carriers, and it taxed all the ingenuity of a boy of 17 to work out this problem to the satisfaction of all concerned, including my employers."

At 20, Rockefeller opened his own commodity firm; four years later he became a partner in a new oil refining company. A devout Baptist, in business Rockefeller worshipped at the altar of efficiency and devised his own ritual for shaping the oil industry. Through tight organization and ruthless cost-cutting, he came to dominate virtually all the refineries in Cleveland and then spread out into refineries in other states at a time when American law had no useful vehicles for the operation of multistate enterprises. Operating in a legal environment never designed for the interstate structure and scale of economic activity that was emerging, Rockefeller became a key pioneer in big business.

To consolidate his hold on a growing empire of refineries, Rockefeller created the Standard Oil Company of Ohio in 1870. Together with his associates, he formed similar companies in other states as he brought competing firms into alliance with him and added their most talented managers to his service. Debarred by law from managing these companies directly, he created in 1882 the nation's first trust, a legal device placing corporate control in the hands of Rockefeller and eight associates as trustees. This quasi-legal form of control gained such notoriety as to become a pejorative buzzword for big business. Yet for Standard Oil the trust lasted only until the 1890s, when Rockefeller made Standard Oil of New Jersey the flagship of his empire under a new state law that legalized holding companies for the first time. By evolving new organizational forms that enabled him to manage an enormous and complex national operation from New York, Rockefeller gave the city a crucial boost toward becoming the corporate capital of the nation.

He did more than create a giant empire. He brought such high-pressure efficiency to the

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John D. Rockefeller

oil industry that he could undercut rival firms and still turn a profit. He developed new oil fields and new technologies that enabled once-unusable oil to be refined. From its dominance of oil refining, Standard Oil integrated backward to the buying of oil fields and forward into retailing. Standard controlled every aspect of the process, from the time the oil left the ground until it reached the consumer's hands. Personally, Rockefeller extended his own interests into iron ore, railroads, lake shipping, and many other fields.

By 1905, Rockefeller's net worth approached $240 million, and that year alone his charitable gifts exceeded $13.6 million. Five years later, he gave Standard Oil stock worth $50 million as seed money for a foundation bearing his name. As his fortune grew, so did his philanthropy. Like many of the entrepreneurs, he became as active late in life giving away money as he had been earlier in accumulating it.

What Rockefeller did for oil, Andrew Carnegie did for iron and steel, Henry Havemeyer for sugar refining (one of Brooklyn's major industries), Gustavus Swift for meat packing, Charles Pillsbury for flour milling, James B. Duke for cigarettes, Richard Sears for mail-order retailing, and Henry Ford for automobiles. The rise of giant enterprises rode a crest of merger mania at the turn of the century, which in turn required immense amounts of capital. Accordingly, in the field of banking, two giants transformed a sleepy insider's profession into the heart of the new industrial order, with New York as its undisputed headquarters.

J. P. Morgan's portly figure looms so large in the history of American banking that other worthies have difficulty escaping its shadow. The son of a wealthy banker, Morgan developed his firm into the dominant house in America at a time when investment bankers were beginning to seize center stage in the industrial economy.

Like some fine old piece of Victorian furniture, solid and massive, built to endure the ages, the House of Morgan at 23 Wall Street was a rock of stability and conservatism in turbulent times. No one commanded more influence, had more connections, or boasted a more unimpeachable reputation for integrity and reliability than Morgan. On Wall Street he was known as "Jupiter," the titan to whom all others deferred.

That reputation stood the nation in good stead during the Panic of 1907, when the aged Morgan gathered about him in his magnificent library on Madison Avenue the leading bankers and business figures in New York in a concerted, and successful, effort to halt the sell-off. Since the United States had no central bank or any institution capable of exerting leadership during such crises, Morgan became the equivalent of a central bank, harnessing balky bankers to put up funds to stave off bankruptcies or provide loans for investors to meet their margin calls. Through the long meetings, a weary Morgan sat at his desk, playing solitaire and smoking a cigar, calculations turning in his head as the cards flipped through his thick fingers. Amid his opulent art and manuscript treasures, leading financiers came to his desk with gloomy expressions, relayed news, received their marching orders, and departed.

Through this ordeal of beating back the Panic, no one stood more staunchly at Morgan's side than James Stillman, head of the National City Bank. A transplanted Texan of impeccable dress and velvet manner, Stillman was so reticent that he earned the sobriquet "The Man in the Iron Mask." But his banking genius spoke for him. Stillman foresaw the vast expansion taking place in American business and made his bank a major player. In 1891, when he became its president, the National City Bank was only the 12th-largest commercial bank in the city. When he retired in 1909, the bank was the largest and strongest in the nation, with assets of nearly $334 million, ten times the amount of 1891.

A cultured, complex man, with a touch so fine and graceful it seemed magical, Stillman

CULVER PICTURES

J. P. Morgan

understood his rivals and associates well. Once, after relating the story of how he had helped Morgan provide the government with a loan during the gold crisis of 1894, he paused to light a cigarette and then murmured, "You see . . . he is a poet; Morgan is a poet." But Stillman's visionary eye never lost sight of what the game was about. Hearing the young banker Henry Morgenthau express surprise at the amount of profit on a transaction, he quietly replied, "Morgenthau, you don't understand what profits we are in the habit of making."

Stillman had the rare ability to remain his own man while forging alliances with other strong personalities. He remained on good terms with Morgan even while joining forces with Morgan's chief rival, Jacob Schiff of Kuhn, Loeb; with William Rockefeller, who had moved out from beneath his brother's shadow to become a force of his own; and with E. H. Harriman, who had fought many a bitter battle with Morgan over the years. It helped that Stillman's two daughters were married to William Rockefeller's two sons.

Using these connections, Stillman moved National City into investment banking as a major player, broadening its customer base to include many of the largest corporations. He opened a foreign exchange office, entered correspondent banking, and bought stock in several smaller banks and trust companies. To cement the ties he forged, Stillman lured the heads of great enterprises onto the board of National City Bank and gleaned priceless information from them at board meetings. "These men attend board meetings once a week and receive $10 for their attendance," he observed with a faint smile, "and for that price I am free to pick their brains."

The Robber Barons put their stamp on cultural as well as business institutions in New York and most other cities. There is scarcely a museum, art gallery, concert hall, orchestra, theater, university, seminary, charity, or other social or educational institution that does not owe its beginnings and support to these men. Whatever their motives, the enduring results remain one of the most impressive monuments to the Robber Barons' careers.

One venerated New York landmark, the Morgan Library, offers a striking example of the connection between business, culture, and philanthropy. In that miniature marble palace on 36th Street, Morgan conducted some of his meetings or enjoyed the company of friends and family, surrounded by some of the treasures from his fabulous art collection. Later that collection became the core for the Metropolitan Museum of Art. Not all of the city's landmarks bear the name of the endower, as Carnegie Hall and Rockefeller Center do, but most—from New York University to the New York Public Library—have money from the entrepreneurs behind them.

Thanks to the efforts of the entrepreneurs, wealth congregated in New York as nowhere else in the land. When the *New York Tribune* attempted in 1892 to identify every millionaire in the nation, by state and city, it came up with a list of 4,047 names. Of that number, 27 percent lived in New York City, a figure not remotely approached by any other place. Brooklyn (then a separate city) had another 4 percent, giving the metropolitan area 31 percent of the total.

New York was a city of immigrants in more ways than one. Men who had made fortunes elsewhere could seldom resist coming to the city to test their mettle in the major leagues. The American city was the ultimate marketplace in those years, and no city offered a more daunting challenge or greater rewards for success than New York.

This influx of migrant millionaires eager for fresh conquests may have given New York a lopsided distribution of wealth, but it also endowed the city with a collection of business talent, genius, and acumen unmatched anywhere else in the world. Rockefeller called Cleveland home, but in

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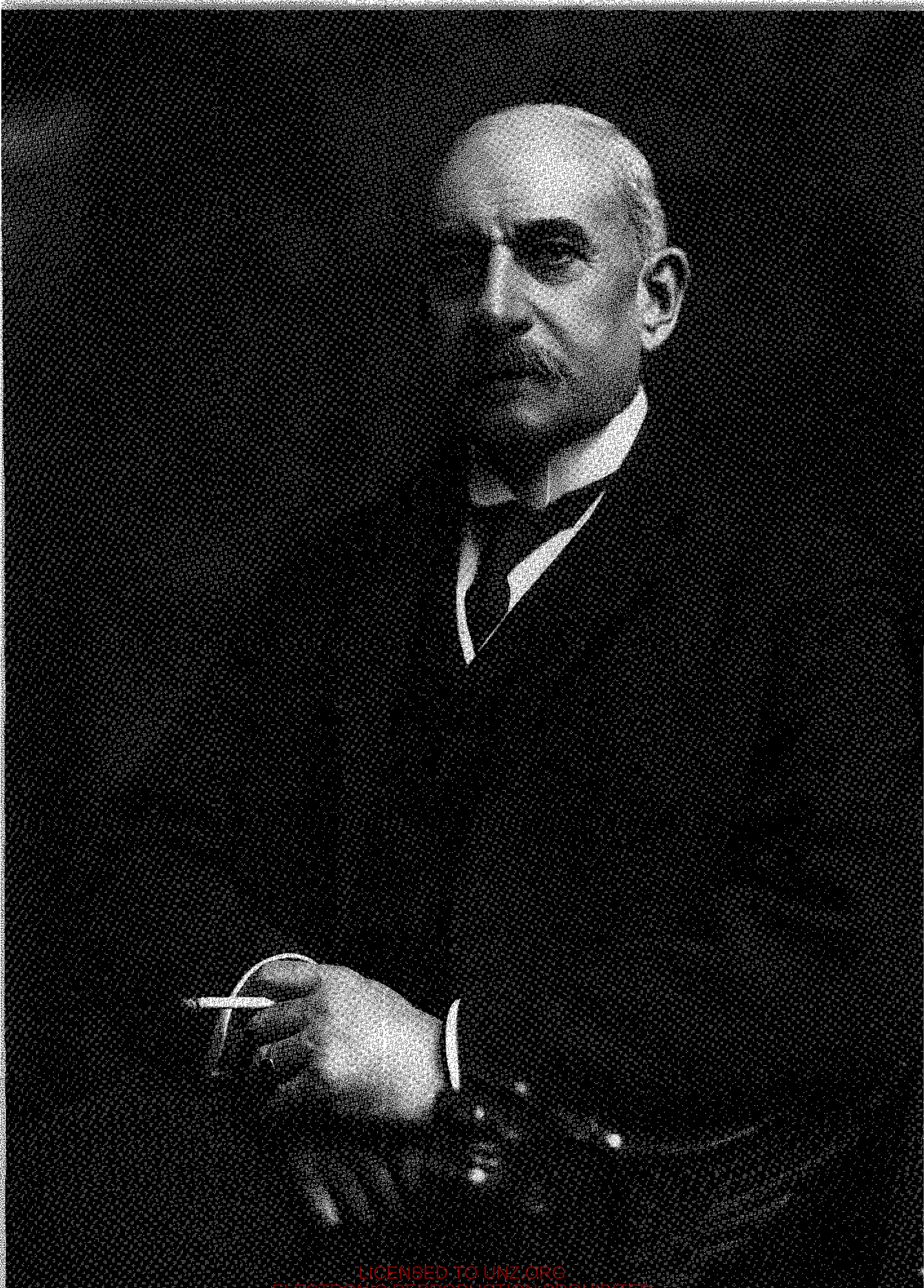
James Stillman



the 1880s he moved permanently to New York. Andrew Carnegie presided over the largest part of Pittsburgh's steel mills, but his mansion sat opposite Central Park. William A. Clark earned his fortune in the mines of Montana but came to New York to lavish it on a young wife, an enormous mansion, and a craving to become a U.S. Senator. Joseph Pulitzer made his journalistic reputation in St. Louis before acquiring the *New York World* and enlightening a new audience. Collis P. Huntington built the largest transportation empire in the world, most of it in the Southwest and West, but he ran it from a desk in New York.

Americans have always been ambivalent about the role of business and its leaders—indeed, about wealth itself. The entrepreneurs inflamed this ambivalence by piling up unprecedented fortunes, counted in the tens of millions of dollars, while the average working man was taking home less than $500 a year. In the process, they ushered in the age of the super-rich and the popular obsession with them. Ward McAllister, the high priest of fashionable New York society, offered this glimpse into what happened when the possessors of the new industrial fortunes laid siege to the citadel of old money and genteel society during the 1880s:

> Up to this time, for one to be worth a million of dollars was to be rated as a man of fortune, but now . . . New York's ideas as to values, when fortune was named, leaped boldly up to 10 millions, 50 millions, 100 millions, and the necessities and luxuries followed suit. One was no longer content with a dinner of a dozen or more, to be served by a couple of servants. Fashion demanded that you be received . . . by from five to six servants, who, with the butler, were to serve the repast. . . . Soft strains of music were introduced between courses, and in some houses gold replaced silver in the way of plate. . . . Our forefathers would have been staggered at the cost of hospitality of these days.

Defenders of these new fortunes equated wealth with success and extolled it as a reward of character, proof of the Protestant ethic in action. In an age bereft of political heroes, the entrepreneurs who forged America's industrial economy served as role models for the nation's young.

The best of them exemplified virtues long treasured by Americans: vision, energy, perseverance, hard work, and character. Even though most started near the top, enough outsiders, like Gould, Carnegie, and Vanderbilt, climbed the slippery ladder of success to preserve the American dream that anyone could do so.

But still these businessmen were vilified, at bottom perhaps because they did their work too well. So brilliantly did they exploit the open system to amass wealth and power that they forced radical changes in the rules by their excesses, even as they forged an industrial system that produced quality goods on a colossal scale at prices that declined steadily for more than 30 years.

E. H. Harriman, who by the time of his death in 1909 controlled more railroad mileage than anyone else and had brought the industry into a new era based on long hauls of large volumes at low rates, pronounced the most clear-sighted judgment on himself and his fellow Robber Barons. During an interview, he startled a reporter by pulling out a sheet filled with data on improvements to the Union Pacific Railroad. "As he read from it," the reporter later recalled, "I realized it was the *apologia pro vita sua*."

"But the public assails and attacks you," said the reporter when Harriman had finished, "and impugns your motives and accuses you of all sorts of things. Doesn't the thanklessness of the job ever embitter you?"

Harriman responded by slapping the sheet of statistics with his hand.

"*That*," he said defiantly, "remains."

Who Killed Broadway?

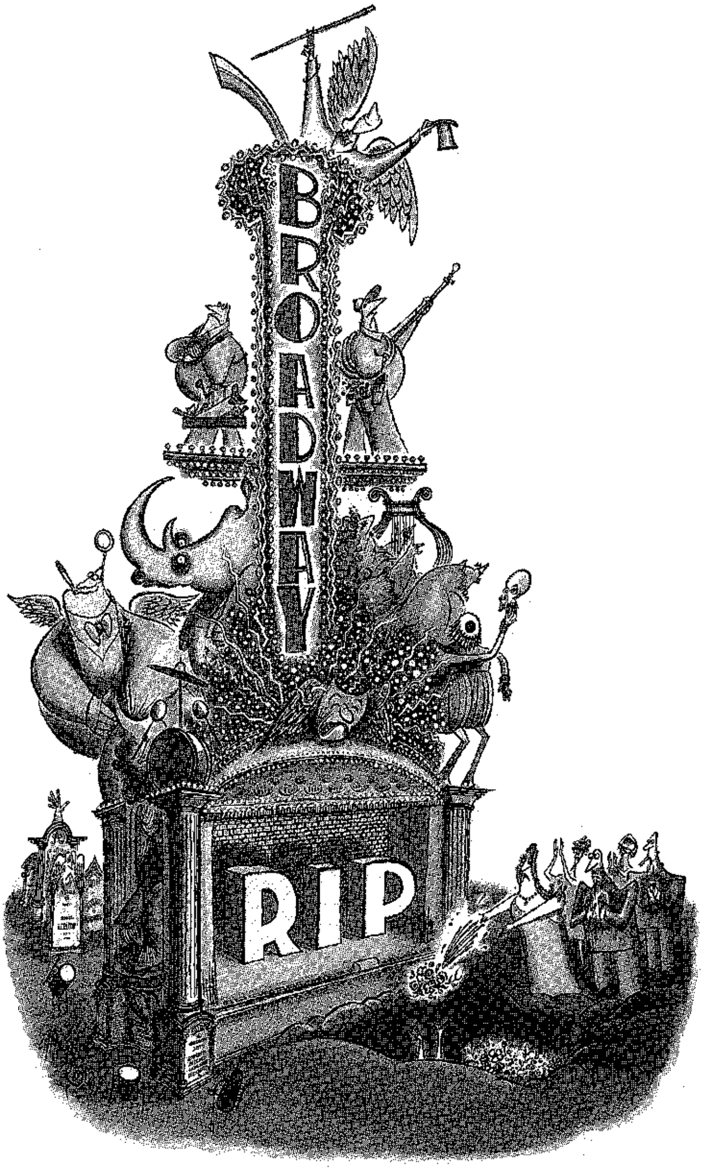
Brooke Allen

It has become almost a commonplace that Broadway is dying; now, however, it may already be dead.

One look at the current season, and it is clear that something is drastically wrong. As Christmas approached, only one "straight play"—that is, a non-musical—was running on Broadway: *An Inspector Calls*, a revival of a 1924 English play. Be generous and add in both Jackie Mason's *Politically Incorrect*, more monologue than play, and Tom Stoppard's *Hapgood*, if you stretch and count Lincoln Center as "Broadway," and you get up to three. But the two parts of Tony Kushner's *Angels in America* had just closed at a loss, despite their awards. And as a grim harbinger of a post-Broadway future, Neil Simon's newest play, *London Suite*, was scheduled to open off-Broadway in 1995.

A casual stroller in the theater district might be forgiven for thinking he has wandered into a Brigadoon-style time warp, with marquees touting hits by George Abbott, George Gershwin, Jerry Herman, Jerome Kern, Frank Loesser, and Rodgers and Hammerstein. Of the 17 musicals playing on Broadway at Christmas, seven are revivals (*Carousel*, *Damn Yankees*, *Grease!*, *Guys and Dolls*, *Hello Dolly*, *Show Boat*, and *Tommy*), and one is a reworking of old material (*Crazy for You*). Seven (*Blood Brothers*, *Carousel*, *Cats*, *Les Miserables*, *Miss Saigon*, *The Phantom of the Opera*, and *Sunset Boulevard*) came to Broadway only after successful runs in London. This gambit is far less risky than opening cold in the hair-raisingly speculative market that Broadway has become.

The avant-garde director Peter Sellars has claimed that the great era of American musicals in the forties and fifties constituted a theatrical golden age.



ARNOLD ROTH (2)

But any such golden age is long gone, and today Broadway functions principally as a museum to enshrine its glorious heritage. What original musicals there are, shows like *Cats* and *The Phantom of the Opera*, have, for all their popularity, not taken the place of the classic musicals like *Oklahoma* and *Pal Joey*, which appealed to a mass audience that included the urban intelligentsia.

Broadway theater is undergoing a crisis of relevance at least as debilitating as that which has crippled the art world for the past two decades. The quality of new drama is very dubious. So is the inspiration behind what passes for "creative" revivals of classics. The reasons for the impoverishment of the theater, of course, are manifold, and include new technology: movies, home videos, and cable television have eclipsed the stage as our culture's entertainment of choice. They have also thrown into question the very validity of live theater as an art form; if film is more lifelike, less mannered, more exciting, more "real" to today's audiences, what is left that the theater does *better* than film?

No one seems to know how to answer, least of all those who are creating today's plays and musicals. Every time yet another revival, yet another dramatization of a movie, yet another bizarre "concept" for a Shakespeare play, is launched, the genre as a whole becomes feebler.

Yet surprisingly enough, while the large potential audience for theater that flourished in the forties and fifties has drastically diminished, there still is an audience for live theater. Theatergoers often must limit themselves to one or two excursions a year, however, because of Broadway's absurdly high ticket prices. Although a seat for *Les Miserables* will set you back $55 to $65, at least you're paying for lavish production values and spectacle. But what about Jackie Mason's *Politically Incorrect*? Mason performs alone, in an ordinary suit, with only the most minimal sets and the simplest lighting. There's no orchestra, no curtain. And yet a ticket to *Politically Incorrect* can cost as much as $49.50.

Why are ticket prices so high? Because it has become prohibitively expensive to produce a show on Broadway. Indeed, producers find it virtually impossible to raise enough money to capitalize and launch a project—unless, of course, it can be considered a sure thing, on the basis of either a London success, an earlier success (in the case of a revival), or the track record of the show's creators—people will probably go to see a show by Stephen Sondheim even if word of mouth is lousy. "One thinks very hard before doing something on Broadway," says Robert Fox, an independent English theater producer whose Broadway credits have included *Lettice and Lovage*, starring Maggie Smith. "It's ridiculously expensive."

To be sure, there is still big money to be made on Broadway. *Cats* has so far netted more than *E.T.* and *Gone With the Wind* put together, with no end in sight. But most shows struggle along, lucky to break even. *Jerome Robbins' Broadway*, a 1989 hit that garnered not only raves but also a Tony Award for best musical, lost money in spite of its nearly two-year-long run. So did other hits, like *Angels in America* and *Jelly's Last Jam*.

Why are Broadway production costs so dauntingly high? Conventional theater wisdom blames the unions, by which is generally meant the stagehands (Local 1 of the International Association of Theatrical Stage Employees, or IATSE) and the musicians (Local 802 of the American Federation of Musicians). Many union rules are indeed outrageous. IATSE requires each of the 36 Broadway theaters to have a permanent "house" carpenter, electrician, and prop man, who enjoy a life of ease at the expense not of the theater owners but of the production companies. These workers help in setting up scenery and conducting rehearsals. Once the show opens, though, they show up only once a week—at payday, to collect a weekly salary of $800 to $900.

To do the actual work of running a show, the producer is obliged also to hire "production" stagehands and electricians, prop men if there are many props, a wardrobe supervisor, and one or more dressers. A "flyman" is required to shift any scenery that moves up or down from the flies. That includes the curtain; the simple act of pushing a button to raise and lower it may be all the flyman does to earn his weekly $800.

On top of all this, the scenery for each Broadway show is built in one of a few designated union shops. Union construction, which IATSE's contract mandates, costs at least twice as much as building the scenery in one of the numerous reputable nonunion scene shops.

The musicians' union has made itself as hated as the stagehands'. Musical houses—theaters designed or appropriate for musicals—are each accorded a quota of musicians, between 9 and 22, who must be employed, at high union wages, even if a show calls for only four musicians. Paid, nonperforming musicians are called "walkers"; the famous producer David Merrick was so enraged at the rule that he made the walkers on one show perform in the men's room during intermission. The musicians have recently relaxed some of their more unpopular rules—whereby, for example, straight plays using small pieces of recorded music had to pay hefty sums to musicians. But the union still imposes heavy costs on already overtaxed budgets.

On top of the labor costs, a large percentage of a show's running expenses goes to pay for the theater itself. Most of Broadway's 36 houses are owned by either the powerful Shubert Organization, which owns 16 with half-interest in a 17th, or Nederlander Productions, with nine theaters, or Jujamcyn Productions, with five.

Producers typically pay theater owners a hefty 5 to 6 percent of the weekly gross, plus about $40,000 a week for ushers, concession workers, janitors, and box-office staff, plus an additional flat fee, negotiated separately, of as much as $20,000 a week. These sums have gone up enormously in recent decades, largely because ballooning real estate values have driven owners' taxes up.

Theater owners receive another slice of the pie in the form of interest on the production's advance ticket sales. The advance is held by the box office, which the theater owner, not the producer, controls. On a hit musical the advance can run as high as $20 million, putting substantial interest income into the theater owners' pockets rather than giving it to the production and its investors.

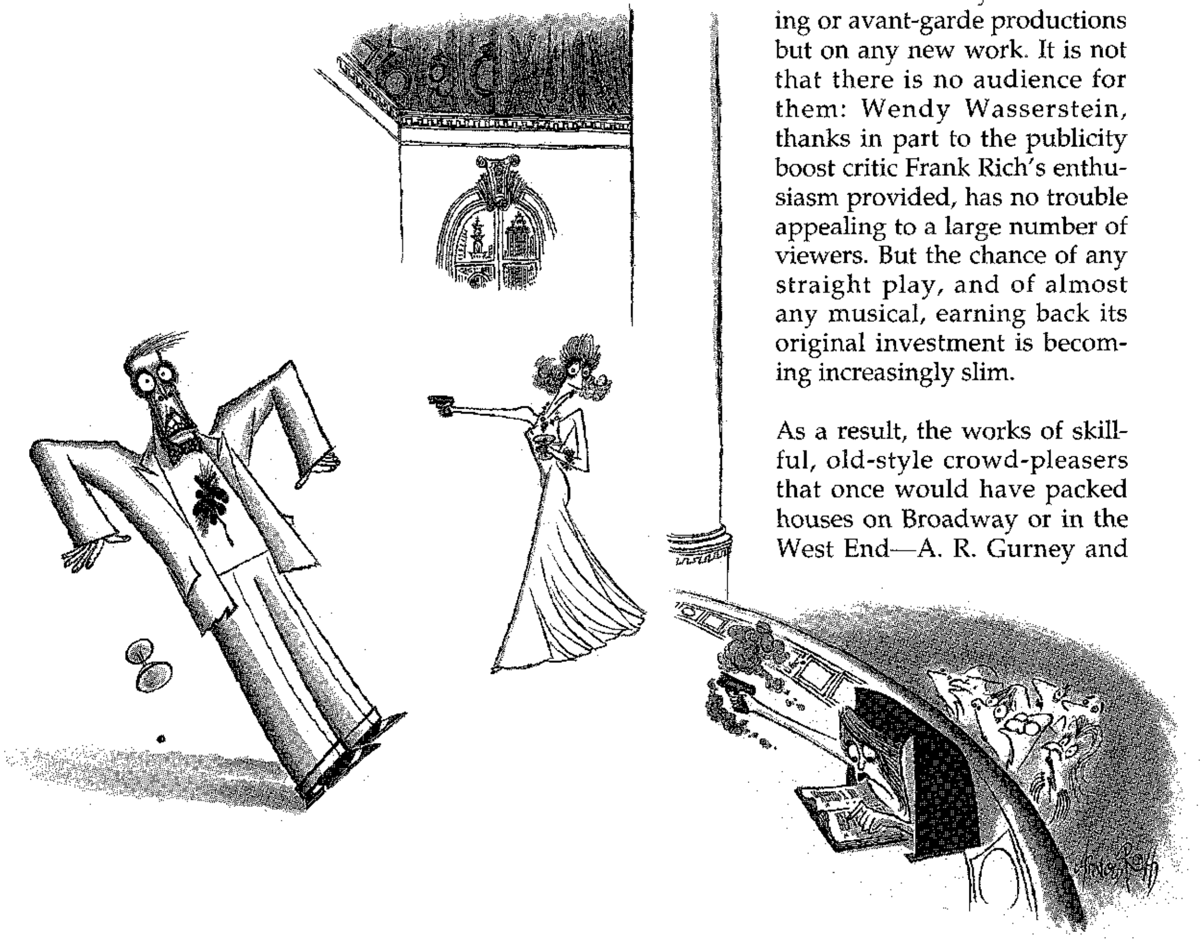
What does all this mean for a show that is not a sure thing—that has neither a London success behind it nor a pre-hyped score by Andrew Lloyd Webber? What about a modest one-set, two-actor play—the kind of show that, 30 or so years ago, used to open by the dozen every Broadway season? It takes an initial investment of some $800,000 to put on such a play. Weekly running costs amount to at least $135,000, which covers salaries to actors, stagehands, designers, and stage managers, rental on sound and light equipment, theater rental and fees, managers' salaries, advertising costs, and many other smaller items. No wonder Broadway tickets are never cheap. Members of the public are naturally ambivalent about shelling out $50 to see a show unless it has received rave reviews from the *New York Times* or a London or Disney seal of approval. Because houses have to be full for the producer to cover the heavy running costs, any play that is less than a smash hit—that fills its house at, say, only 70 percent—is unable to keep going. When it closes within a few months or even a year of opening, its investors suffer heavy losses.

Even without these Broadway-specific expenses, some of them artificially inflated, broad economic forces are inexorably pushing theatrical costs up faster than inflation. William Baumol, a professor of applied economics at New York University who serves on the board of the Theater Development Fund, argues that costs on Broadway, which throughout the century have increased faster than inflation, are matched by proportional rises in costs for all the live performing arts—and also for education, health care, legal services, and other services that Baumol groups under the rubric "handicraft industries," industries that continue to be heavily dependent on labor.

In handicraft industries, Baumol has shown, real wages rise with the general economy, but because there are few opportunities for automation, productivity does not rise accordingly. This trend has continued steadily since the beginning of industrialization, and Baumol gives a striking illustration when he speaks of the "break-even length of run" in the theater: the time a show must run to earn back its original investment. Currently, the break-even run for a straight play is at least a year; for a musical, perhaps two years. "Before World War II," Baumol says, "it took 14 weeks for a straight play to break even. Before World War I, it took six weeks. In Shakespeare's time, a two-week run was considered a phenomenon."

So, as fast as ticket prices are rising, actual production costs are rising even faster. There's a limit to how high producers can raise ticket prices; beyond that, they have to cut costs in other directions—by reducing the cast, simplifying the scenery, or cutting a three-act play to two acts. Their other way of staying afloat is to minimize risk: hence the push for reliable blockbusters and revivals. By now, producers and investors are reluctant to take a risk not only on interesting or avant-garde productions but on any new work. It is not that there is no audience for them: Wendy Wasserstein, thanks in part to the publicity boost critic Frank Rich's enthusiasm provided, has no trouble appealing to a large number of viewers. But the chance of any straight play, and of almost any musical, earning back its original investment is becoming increasingly slim.

As a result, the works of skillful, old-style crowd-pleasers that once would have packed houses on Broadway or in the West End—A. R. Gurney and



Simon Grey, to name two—now open in the traditionally non-commercial venue of off-Broadway. Some of our best and most popular younger playwrights, like Terrence McNally, Christopher Durang, and Jon Robin Baitz, are considered off-Broadway material. A major new work by Edward Albee, *Three Tall Women*, did not find enough Broadway backers and ended up uptown at the Promenade Theater. It made money and won the Pulitzer Prize, but, as an off-Broadway show, it was ineligible for a Tony Award. The same fate has befallen the latest Sam Shepard play, *Simpatico*, which, despite two stars, capitalization at the relatively modest sum of $600,000, and the drawing power of its famous author, did not find enough investors to support a Broadway opening. It is currently in a limited run off-Broadway and will probably turn a profit in a later, extended run, most likely also off-Broadway. Meanwhile, with commercial comedy and drama monopolizing off-Broadway houses, non-commercial theater—classic and avant-garde plays—is being crowded out.

The Tony Awards have become laughable, with the nominating committee desperate to scrape up four respectable candidates in the categories of best play and best musical. The contests for best revival of a play and best revival of a musical, in fact, are often more compelling than those for original works.

As early as the fifties, Arthur Miller foresaw a future in which the Broadway straight play would die, pricing itself out of the reach of its natural audience. "The economic problem has become an aesthetic one as well," Miller now says. "My early play, *The Crucible*, would never be produced on Broadway today—too expensive." And not only original work suffers: Miller says that Broadway productions of Shakespeare plays, with their large casts, are virtually impossible because of high costs. "They've killed an art form," Miller says.

Neil Simon's recent defection to off-Broadway is symbolic of Broadway's crisis. Simon has consistently turned out plays that, whatever their critical reception, have attracted an audience; on Broadway his name is synonymous with success. When Mr. Broadway himself moves out, it's no wonder that many theatrical professionals think the Broadway play is an endangered species. Producers have tried to ameliorate the situation, fighting labor excesses in periodic negotiations between the League of American Theaters and Producers and IATSE. Until recently, the league has seen no alternative to dealing with IATSE, which controls not only stagehands but box-office staff, ticket takers, mail-order sales personnel, ushers, doormen, press agents, and managers. A general strike could shut down all of Broadway and prove ruinously expensive. But now a group of Broadway's most powerful independent producers has persuaded the theater owners to deal far more aggressively with the union. The league will enter the 1995 negotiations with a stated willingness to risk a strike. Whether such a strike would save Broadway or push it finally over the precipice is a question no one can answer.

Some have attempted less radical solutions to Broadway's problems. In 1990, independent producer Robert Whitehead launched the Broadway Alliance, an organization that produces plays in underused theaters, keeping production costs and ticket prices under control. Shows produced under the Alliance's auspices are required to keep capitalization at less than $600,000 and ticket prices below $35. In consideration for filling seldom-used theaters, the producers receive concessions from the unions and theater owners. The Broadway Alliance has so far produced four shows, but the venture hasn't really taken off.

Enter the Walt Disney Company, with its restoration of the New Amsterdam Theater, its planned cleanup of sleazy 42nd Street, and its new Broadway musical version of *Beauty and the Beast*, which, though slighted at the Tony Awards, is coining money at the box office. Many Broadway insiders fear that Disney, with its enormous resources and built-in audience, will take over Broadway.

And indeed Disney wields all the might of Big Capitalism. The Broadway Alliance forces its producers to scrimp on advertising, limiting their budgets to $150,000 per show. Producers of ordinary Broadway shows have to pay for advertising out of their already stretched budgets or else go hat-in-hand to investors to support extra publicity. Disney, by contrast, need only reach into its own deep, deep pockets. Disney's ample capital can bring hefty returns on its investment: though *Beauty and the Beast* was expensive to capitalize, even at Disney's stated figure of $11.9 million (insiders believe it was a good deal higher), the show is pulling in a weekly gross of $500,000 to $600,000 and will no doubt pay back its initial investment swiftly.

Broadway's future can be discerned in its current season. It likely will continue to flourish as a forum for big spectacle, whether produced by Disney or Cameron Mackintosh, the foremost producer of large-scale musicals. It will probably also keep reviving shows from its greater past, not only musicals like *Guys and Dolls* but also, perhaps, straight plays with Hollywood stars. But many who have made their careers on Broadway believe that it's all over for original dramas, and even for original comedies and musicals. Consider Tony Roberts, a versatile and popular actor who, when he reached Broadway stardom back in the sixties, assumed that he would have a lifelong career on the New York stage. Now, in spite of two Tony nominations and a long list of hits including *Promises, Promises* and *Play It Again, Sam*, Roberts makes much of his living doing voice-overs and is best known for his roles in Woody Allen films. He still does an occasional Broadway stint, like his recent run in *The Sisters Rosenzweig.* "No one thinks they can have a career on Broadway anymore," Roberts says. "There just aren't enough shows."

Talent continues to drain off to the West Coast. Actors like Kevin Kline and Sigourney Weaver, and directors like Des McAnuff and Mike Nichols, are just a few of the theatrical talents who have found the West Coast friendlier and more rewarding than New York. As for younger artists just beginning their careers, the best and brightest almost all choose Hollywood, lured not only by its superior financial rewards but also by its more vital acting and writing community.

With any luck, non-commercial theatrical ventures as well as the popular, mainstream pieces that no longer thrive on Broadway will continue to find a home—albeit a smaller and less glamorous one—off-Broadway. This season features new plays by Horton Foote, A. R. Gurney, Oliver Mayer, Terrence McNally, and Sam Shepard; a play based on the letters of Virginia Woolf and Vita Sackville-West starring Vanessa Redgrave and Eileen Atkins; and well-received works by Edward Albee, Eric Bogosian, David Ives, and others.

Yet off-Broadway can never be a real cultural force, as the Broadway theater was in its heyday, simply because off-Broadway theaters and publicity budgets are not large enough to create the kind of broad, middle-class audience that packed the theaters 40 years ago. Off-Broadway houses are limited to 499 seats (most are substantially smaller); Broadway houses seat as many as 1,900. The potential profits on an off-Broadway show are fairly small: successful ones seldom net more than $25,000 per week, and those successes are few and far between. Off-Broadway producing is usually more a labor of love than a viable commercial venture. And off-Broadway's costs are rising, too, in direct proportion to Broadway's.

Broadway lives on, though in diminished form. Against all odds, there are still a few die-hards—like Robert Whitehead, a veteran producer whose hits, going back to the forties, include *Bus Stop, The Member of the Wedding*, and *A Man for All Seasons*. "Every time I produce a Broadway show, I swear it's the last time," he says. But this winter, ever hopeful, he goes into rehearsal with yet another.

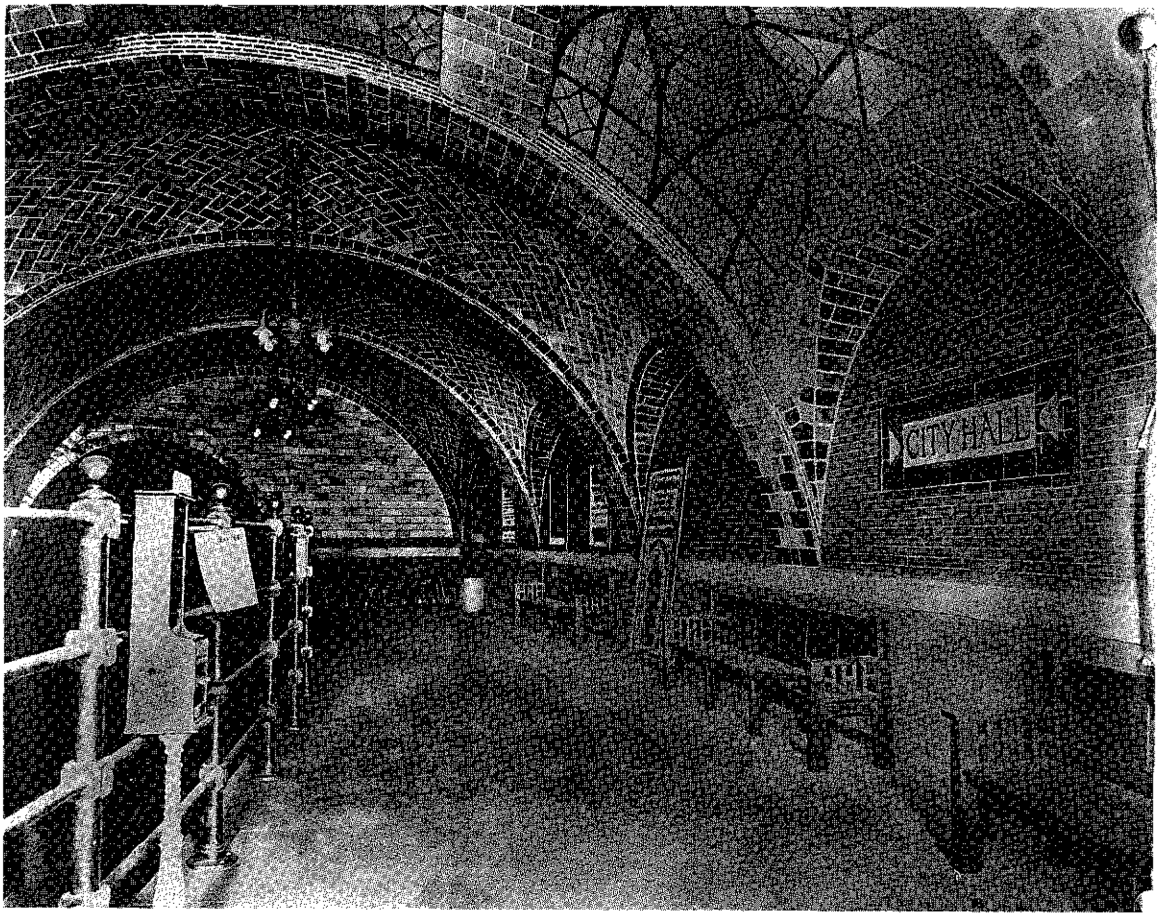
Underground Art

Nathan Glazer

The 1899 contract to build New York City's first subway contained this resounding declaration: "The railway and its equipment . . . constitute a great public work. All parts of the structure where exposed to public sight shall therefore be designed, constructed, and maintained with a view to the beauty of their appearance, as well as their efficiency."

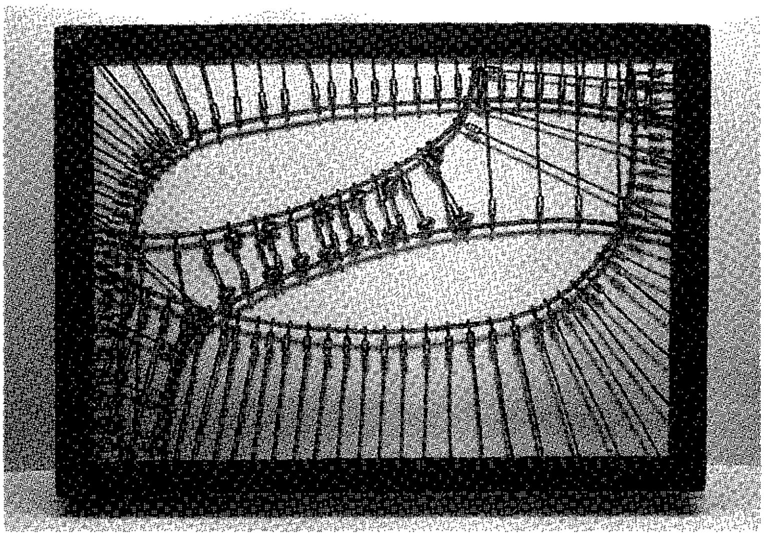
Five years later, the IRT subway opened, running from City Hall up to Grand Central, across 42nd Street to Times Square, and up Broadway. The stations featured distinctive ceramic panels designed by the prominent architects George Heins and Christopher Grant LaFarge. These plaques—the beaver of the fur trader John Jacob Astor for Astor Place, the galleon of Columbus Circle, the grand purple City College seal at 137th Street—mostly disappeared in later remodeling. While newer lines, such as the Lexington Avenue IRT, were barer, they still made quite a play of displaying and bordering the station names in colored ceramic tile.

But though the art of later lines was more sparse than that of the original IRT, the subways



Heins & LaFarge's grand, vaulted old City Hall station of 1904.

never descended, in their original construction, to narrow functionality. Clifton Hood, in his history of the New York City subways, *722 Miles*, notes that the Independent lines, built by the city in the twenties and thirties, were constructed with a strict economy in mind. But one can nonetheless see that someone had been thinking aesthetically. The tiles in the local stations between two express stops are all of one color family, but lighten or darken (depending on direction) as one approaches the next express stop. One can hardly call this art, but it was a fillip to the jaded subway rider if he recognized the scheme. As a teenager, I remember enjoying the subtly changing colors and feeling a sense of arrival when the train screeched to a stop at an express station with a completely different color.



A skylight by Mark Gibian proposed for a Manhattan station.

The years have battered the subway system badly, but of late the Metropolitan Transportation Authority has begun paying attention again to the aesthetic environment underground. Through its "Arts in Transit" program, the authority has installed more than 50 new permanent art projects in its subway and commuter rail stations. It has another 50 on the drawing board.

The new works of art are enormously varied: in the materials used, in the styles they display, in their location. On station walls, on stairways approaching station platforms, on mezzanines, they include works in the classic ceramic tile of the old subways, in bronze, in glass, in enameled porcelain, in metal. Some are representational, some abstract, some symbolic, some evocative of the past; and in many cases, one thinks, it will be hard for the unsophisticated subway rider to know what to make of the art. There is no uniform scheme of decoration and artwork, as there had been on the original IRT and the IND lines.

Noting from the MTA's useful guide, *Arts en Route*, that a number of stations on the Lexington Avenue line (the 4, 5, and 6) feature new artworks, I took a trip down the line from 125th Street to 42nd Street.

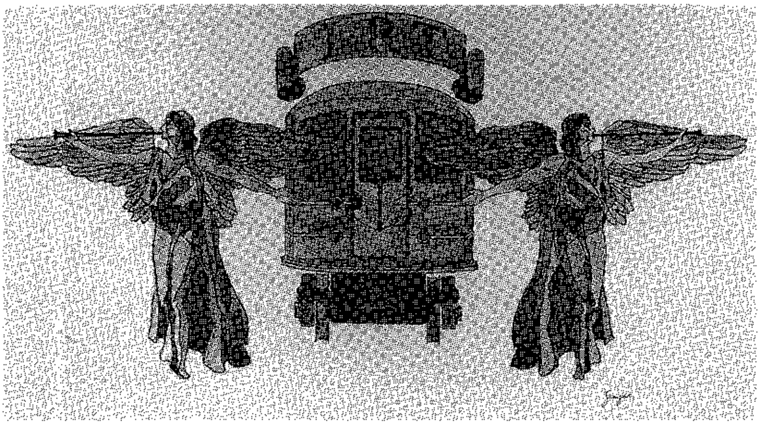
On the mezzanine walls, the 125th Street station has conical bronze reliefs by Houston Conwill, named *The Open Secret*. They look good enough, but it is not clear what they symbolize, if anything. The markings might be a street grid or perhaps African design motifs. At any rate, this work immediately calls to mind a key problem for art in the subways: substantial as these artworks are, they make no great impression compared with the extensive subway walls on which they are placed.

Another problem: the station platforms at 125th Street are dismal, the floors encrusted with old, black chewing gum. The tile walls, with their remaining patches of old decoration, are broken and streaked with dirt. One immediately asks, philistine though the thought may be: Might the MTA not have done better to spend the money for art cleaning up the station? The thought persists as one proceeds to the 116th Street and 110th Street stops.

At 103rd Street, however, that is just what has been done. The entire station has been retiled, walls and floors. The new tile floors are mostly free of chewing gum. The original decorative sign identifying the station has been cleaned and restored and is surrounded by new buff tile. Appropriately, the major design element in the original station was its name—unglamorous as 103rd Street is, compared with Wall Street, City Hall, Astor Place, or Columbus Circle. Appropriately, too, the new artwork here is ceramic tile murals above the entrances to the platform by Nitza Tufino, called *Neo-Boriken*. Boriquen, of course, is an old name for Puerto Rico; the station is in one of the city's oldest Puerto Rican neighborhoods. The murals are colorful but, as in the case of 125th Street, too small in relation to the size of the station. Nor are they particularly obvious, located as they are above the stairways.

Ninety-sixth Street is also undergoing a full restoration, including the installation of mosaic tiles. The new floors are large concrete squares; the walls are white tile; and when I came through the station, a good number of workmen were completing the tile work on the walls and—wonder of wonders—scraping chewing gum off the new floors with an instrument that seems specially designed for the purpose. If the new flooring is smooth, hard, and non-porous—ceramic tile, terrazzo, polished stone, or concrete—it would seem no great matter to keep the floor clear of gum.

Forty-second Street has always been a problem, with its too-narrow platforms and too-low ceilings. But what has been done on the mezzanine, though the MTA doesn't list it in *Arts en Route*, is wonderful—clean, bright, and colorful. The columns are stainless steel, and in the middle of the floor is a huge, multicolored compass, a most suitable decorative element for an underground concourse where one is likely to lose one's bearings. The contrast with the station below is striking. The artworks listed for 42nd Street are *Fast Track* and *Speedwheels*, mixed-media sculptures that one finally gets to see at the end of the long and dismal passage that connects the Lexington Avenue line with the 42nd Street shuttle. The passageway is hardly improved by some old, scattered colored tile, dating from a decades-old effort to brighten it. Nothing is wrong with the works of art when one finally reaches them; it is just that the passageway is so long and the sculptures so small relative to it.


An artwork by Vanessa Stevens proposed for a Brooklyn station.

The problem, to my mind, is that the MTA is thinking of art *in* the subway rather than of the subway *as* art, as its creators did nearly a century ago. We see the same problem when we consider the artworks hanging on the bare lobby walls of postwar office buildings. Contrast the result with the wonderful lobbies of such older buildings as the Woolworth, the Chrysler, the Chanin, and scores of others, in which the lobby is a work of art in itself. Today's designers find this unity between architecture and art hard to achieve. Too much art meant to embellish architecture becomes an irrelevancy, too small to match the enormous walls even though it may be the biggest work the artist has ever produced.

The first response to such a criticism might be that we can't rebuild the subways. The Washington, D.C., subway is a work of art, but it was built as one great project, adhering to a single impressive design for its stations, created by a single architect. In New York, we deal with a heritage of variousness. Yet cleaning and retiling and reflooring, with imaginative colors and fittings—the process going on today, if all too slowly—does much more for a subway station than the occasional piece of art mounted on a platform wall, over a stairway, or in a mezzanine. Aesthetic concerns can be integrated into this station-rebuilding process, as they have been at 103rd, 96th, and 42nd Streets. What is really successful in these stations bears no artists' names. What really works are the large functional elements, such as the new iron grilles and railings.

Riding the subway, I saw an advertisement for "River of Steel," a documentary on the building of the New York subways being shown at the Transit Museum in Brooklyn, itself located in an abandoned station. The ad was illustrated by a stunning picture of the original City Hall station, vaulted in Guastavino tile—and closed since 1945. That is the true art of the subway: the subway as a work of art. Couldn't the MTA think of a way to reopen this station so that people can marvel at the ambition that once created such an extraordinary setting for the trains that carry ordinary people?

Christmas Party: A Story

Johanna Kaplan

There are days in mid-December when already, not long after lunch, the sky draws down so far that every reflected thing is shadowed, and from my steel-gated classroom windows, all the charcoal-etched glimmerings of the world outside—looming, spectral rows of city project buildings, horizonless rubble of wrecked and plundered cars, dingily curving swath of railroad tracks emerging from a soot-encrusted tunnel, and in the far distance, the forbidding, archaic, black iron footbridge to Ward's Island—all of this is caught in a wind-driven, swirling grit that seems to endow the whole dismal scene with the coal-smeared dusk of an earlier time. A haunting, deranged urban majesty pervades the desolate streets in this grim, pewter light—and, in its own way, is terrible and humbling, as if, forever uncannily sequestered somewhere in the harsh, high, scouring wind, are impassive, rebuking traces of all those from bygone generations whose lives in this city were foreshortened by bleakness.

Yet, out of just such a blustery, preternatural darkness one afternoon—in fact, tripping through it in an open-swinging, tangerine-and-hot-pink down jacket—came Marisol Delgado, by this time 15, dropping in, *bopping* in, for a Christmas visit. Usually, return visits by old students, always officially frowned on by the Midhattan Child Guidance Center, have about them such a desperate wistfulness that they are hard to sustain for very long. But whenever Marisol came back to visit, she would always have in hand something that she was so full of eagerness to show me, so bursting to display or discuss—an outfit she had put together for a party, a sheaf of favored new hairdo possibilities from hairstyling magazines—that within minutes, the classroom itself, and the younger children, at first only now and then allowing her a few noncommittal glances, would seem charged with her hard, ingenuous liveliness. Even when she arrived with a serious trouble on her mind—a razor fight among the girls in her group home, a duplicitous, out-of-the-blue abandonment by a boyfriend—she was able to confound the undertow of her life's stark givens with a mean streets show-and-tell so vibrant and infectious that you could easily lose sight of all the cheerless custodial transfers she'd been through, all those hurried, unpredictable, just-shove-everything-in-a-big-green-plastic-bag shifts from one place to another.

As it happened, I was in the midst of cleaning up the remains of the class Christmas party when she came in that afternoon, so she could see immediately that the school day was over. For a minute or so, she hung back in the doorway, in her nearly glowing down jacket, moodily taking in the seemingly simple scene: an empty elementary school classroom at Christmas time. Then, treading carefully around the sticky course of spilled soda and half-eaten candy canes, and the sad trail of rejected, donated Christmas gifts (year after year, so many of them somehow *wrong*), she said, with a kind of glum, low-grade, accusatory disappointment, "The kids—all your littu guys, they all went awready? And now you going home soon, too? . . . Oh, well! I'm just quick gonna show you what I might be wearing for New Year's Eve. Now remember—I oney said *might*. I *could* change my mind still, I hope you know."

There is a certain fashion category, a look you sometimes see talked about in fashion pages—"gamine chic"; and though I can't say I'm sure about all that it entails, I've always felt it could be that Marisol, with the necessarily rude charm of her catch-as-catch-can clothing swaps, and the ingenuity of her raffish, innately stylish combinations—Marisol might exemplify gamine chic in its purest form. So, for instance, on that miserable, raw midwinter afternoon when she threw aside her down jacket, it was to produce a longish, down-at-heels tuxedo jacket, its ratty sleeves elegantly rolled into cuffs; a bright red camp shirt with a flaring, raised collar; a pair of tight, black synthetic-leather pants; and yes, of course, boots—high black boots. The effect was a kind of slinky, playful, faintly rancid glamor—pure Marisol—and I began to smile.

"*Now.* First, one thing—just forget about the shirt. Don't think I ever gonna wear no stupid, littu red shirt like this for New Year's Eve!"

"You could, though, Marisol," I said. "I think it works." And as soon as I began to explain what I meant, bingo, we were that easily launched into a busy, familiar conversation, and her downcast mood of a little while before seemed absolutely to vanish. In fact, we were already more than halfway into a zesty comparative discussion of the dozen or so dressy white blouses within her borrowing or trading orbit, when the door of my classroom was abruptly poked open by the art therapist, Jessica, who called out in distinctly rattled tones, "Did you by any chance see my new fine-point Magic Markers? A whole humongous brand-new set I just got from Pearl Paint? *With* my own money!" But she was an officious young woman in her way, this Jessica, and catching sight of my unexpected visitor, she said, instantly, with the thoughtless, unmediated sanctimony of youth, of the newly professional, "*You're* not supposed to be here, Marisol. *You* know that. Patients are *not* encouraged to come back. You guys all know that when you leave here."

"Oh, *hi! Jessica!* Merry Christmas!" Marisol turned around to her with a high-wattage, dazzling smile and a silvery, cartoon-princess soprano. Then, as an absolute matter of course, casually, dispassionately looking over the young woman's clothing, she burst out in sudden, surprised admiration, "Ooh, I love your necklace, Jessica! . . . God, that is *cute!* Where you got it? The Village? SoHo?"

Fingering the beaded, thin silver strands now herself, the art therapist, placated, answered a little less stiffly, "Well—it was a gift, actually. From my fiancé."

"Ooh, Jessica! For real? You engaged, you getting married? You got a ring? I could see it?"

"Are you kidding? I wouldn't wear it here. Am I crazy?" But she caught herself then, and finished, "I mean, I come by subway every day. How could I wear a ring like that on the train? I don't exactly feel like losing my finger."

Blandly, Marisol suggested, "All you gotta do is turn it when you get on the train." And she made an inward-turning gesture on her own finger, adding, "Just turn it so the diamond part don't show. Lotsa ladies be doing that on the train. You could see it evvey day, almost."

Jessica, from the time she had come into my room, had been pacing through it, searching in a haphazard way, over surfaces and inside desks, for her mislaid Magic Markers. Distractedly, she said, "Oh, great idea, really! I mean, if *you* can see it, Marisol, is there any reason some disgusting person out there couldn't?" And determining now to take her search elsewhere, she offered us both a preoccupied wave and headed toward the door, over her shoulder, calling, "By the way, Marisol, I don't know where you're going, but that definitely is one incredible little getup you've got there."

"*Thank* you, Jessica, Merry *Christ*mas, Jessica," Marisol flutingly sang out in that chorus-of-angels voice she could pull out from somewhere.

But when we were alone again, her face seemed to collapse, and I saw suddenly how much she had had to crank herself up just to have this trivial conversation. Finally, I said, "What's wrong, Marisol?" and I dreaded the answer, because I knew that whatever it was, there was very little chance I'd be able to help.

She had been sitting on one of the children's desktops, more or less facing me as I continued straightening up the room; she got up now—a stylish, sweeping movement in her frayed tuxedo jacket, and turned away from me, her expression at once pained and evasive. Glancing from the blunt-scissored snowflakes Scotch-taped across the windows to the pipe-cleaner reindeer and Santa Clauses dangling on a lanyard coil from the soundproof ceiling tiles, she said in a thin, guarded voice, "It's hard. . . . It's just—I don't know—*hard*, this time of year . . . without my mother."

But this, I have to say, truly took me aback. Because in all the time I had known her, through all the different foster homes and living arrangements she'd been in and out of, I had almost never heard her mention her mother. And I knew then that I had colluded with her—perhaps because I admired her pluck, perhaps because I wished to believe that of the many kids I had taught over the years, there would inevitably be a few, some unusually resilient few, who would be able to come through. For reasons of my own, I had unwittingly conspired with her in the impossible fiction that she was a girl who could manage—scrape by, somehow—without mother or father or the most rickety ladder of support. As if I didn't know better. As if such a creature could really exist.

Fumbling now, I said, "Do you think your grandmother could help you get in touch with her? Just so you could call her, talk to her from time to time?" Because really, all I knew for sure about Marisol's absent mother was that years before, partly as a result of a breakup with a boyfriend, and partly in response to advice from the "spirits," she had gone off to stay with relatives in Puerto Rico; when she left, she took along only two of her six children; and somehow, then, she had simply remained there. About Marisol's father, who would turn up in her life every now and again with a gift of sorts or a bit of cash, I knew that he had been a drug addict and an alcoholic, and, past that, that he had another family.

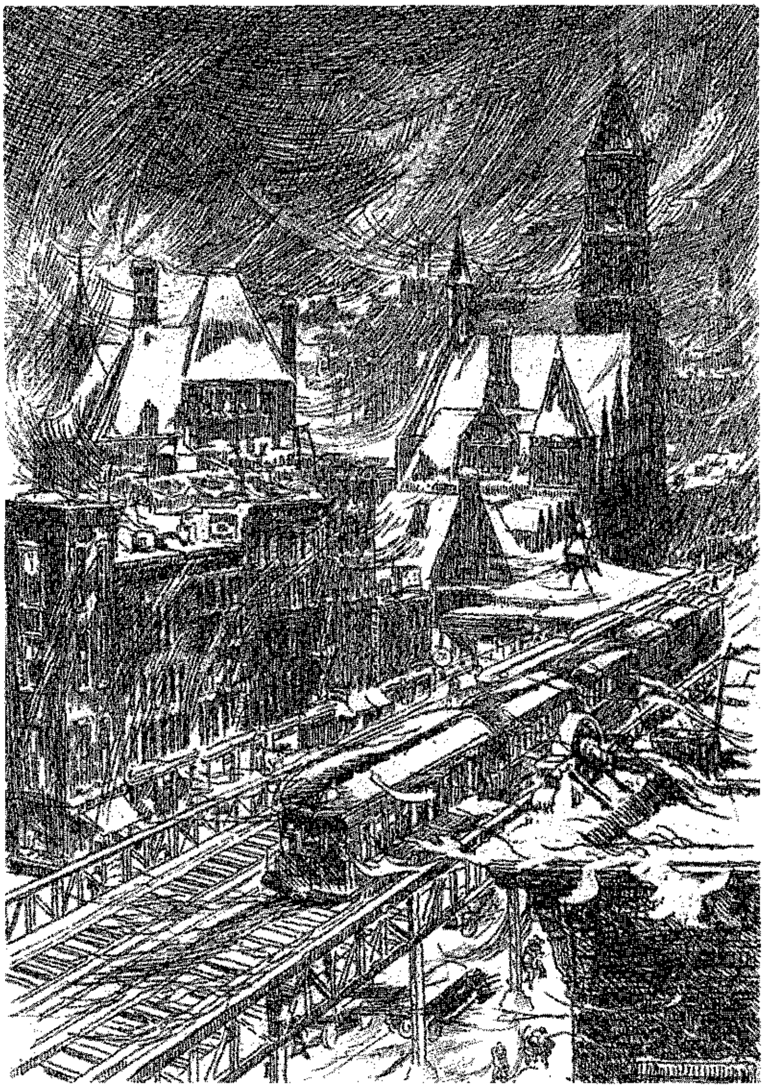
In a spasm of irritation, my old student frowned at me saying, "My *grand*mother? . . . Oh, wait! You mean Grandma—the Cuban lady. She was nice, pretty nice. . . . But then, I don't know, they din tell us nothing, they just moved all the kids outta there." So "Grandma" was just another passing foster home, another salaried stranger's rooms—not a grandmother at all. "Anyway, I *can't* call my mother," she threw me a dug-in, misery-laden glance. "See, I can't call her over there."

I was just dense at this point and did not catch the hints in her code of despair. Stupidly, I said, "There's no phone nearby where she is in Puerto Rico? It's that deep in the country?"

From the music therapist's office two doors away, for some time now, there had come over and over again, on an electronic keyboard, the sounds of a child plunking out the first line, and only the first line, of "Jingle Bells." Beyond that, from somewhere in the hallway, or the clinic waiting area, above the jangling phones and nagging in-and-out door buzzes, the irregular thumps of angrily hurled-down toys and violently slammed doors, there was now also a baby crying—shrieking, really, in an ascending, perhaps unsoothable rage. It was against this screen of noise, in its way unremarkable to each of us, yet so deeply insinuated with narratives of woe, that Marisol dully answered, "She ain't *in* Puerto Rico no more. She back here now," and she stared unrelievedly at the floor. So I knew we had hit the outlines of a familiar minefield: what she wanted to tell me was wired precisely to what she did not really wish me to know. Finally, still avoiding my gaze, she said in dead, uninflected tones, "She upstate. In jail." And before I could think of an answer—any answer at all—she thrust me an anguished look, saying, "See, she was just doing a favor for this lady. The lady axed her if she could hold some credit cards for her? My mother din know nothing."

I was stunned, but I only said, "Is there some way you could get to visit her?"

With a dejected nod, her nervously sucked lips becoming puffy and very pink, she said, "I been. Twice. My social worker hafta take me. But I got a new one now, a diffen one, and I don't now if she gonna wanna do it . . . . Plus, I don't know, my littu twin sisters, the babies? I'm afraid they ain't even gonna know me or nothing."



John Sloan, Snowstorm in the Village, 1925

Oh, but this was such an old, sad story, the senseless scattering of brothers and sisters to foster homes from one end of the city to the other. As it happened, around that time there had been a flurry of publicity for some so-called innovative infant homes that had only recently been opened in Queens. These were what I had in mind when I asked, "Exactly where would you have to get to, Marisol? How far away is their foster home?"

"Uh-uh," she shook her head, and unhappily began pulling at the gold-chain initial "M" around her neck. "They ain't *in* a foster home. They up there with my mother. Upstate."

"In *jail*? The *babies*?" This cry came out of my throat with such raw and startled horror that it took me a while to realize that tears had sprung up in my eyes.

"No, no—Wait, it ain't *like* that. It ain't that bad." The girl, her dolefully blunted expression stung back into anxious mobility, hastened to provide me the tattered comfort of her own experience. "See, those littu girls, they born up there. It's like—kinda like a *place*. Like a Center. . . . Sorta like a *program*, maybe. Oney you can't *go* nowhere. See, that's the problem." She suddenly sank down onto a desktop as if the air had been squeezed out of her. "You really can't go nowhere never."

This grim survey—her naive précis of tolerable misfortune—sent a true shudder through me. Because she had just enumerated every public embodiment of care, every mercifully intended social arrangement she had ever been shuttled through—a *placement*, a *Center*, a *program*: all these which had determined so many of the ordinary moments, the subtle, enduring, sun-and-shadow shapes of her childhood. Now, quickly casting her mind back, she had passed again through the jumble of reeking, overlit corridors, shout-echoing rooms, and comfortless long tables, only to find that each of them, all of them, could be likened to prison—itself so oddly familiar-feeling for her that, in the end, the clanging-door brutality of incarceration could seem neither alien nor alarming, just simply reminiscent.

Right then, I heard at my door the loud tattoo of knocks that signaled the start of the weekly staff conference. I knew, of course, that this summons was coming, and I really did have to go; but because I was not prepared to dispatch Marisol out into the streets at this point—in this state of unhappiness, blandly wave her off into the winter darkness—I said, "Wait for me, Marisol. The meeting'll be over soon, and then we'll go out for a quick Christmas treat. Pizza, Chinese, you name it." Not quite the moon, but anyway, what I could offer.

She gave me a pleased but surprisingly uneasy nod, at last guardedly saying, as her eyes traveled through the room, "I could fix your shelfs, your closets?"

I knew this request: I had seen it bring Marisol a kind of comfort, relief, pleasure even, to create from the perpetual hodgepodge of books, tapes, records, games, puzzle pieces, and arts and crafts materials that spilled helter-skelter out of my shelves a miraculously

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right-angled, ingeniously stacked showpiece of order. I sympathized with the wellsprings of the wish, when you are in turmoil, to wrest order from any accessible example of chaos; but to empty out the mess of my closets could take hours, and I had to get home. Already halfway out the door, I said, "Please, Marisol. Just one shelf—*any* one shelf, either closet," and I ran down the hall to the airless little conference room with a ragged, oppressed feeling I did not like in myself: I *had* to go to the dreary, pointless meeting, I *had* to take Marisol out for a treat, I *had* to rush home in order to begin a tedious round of overdue chores and errands.

Predictably, of course, the meeting was only pro forma that last afternoon before vacation, so after a quick run-through of each child's current-status summary, and the dutiful, dubiously festive passage around the table of a bag of Stella D'Oro cookies, I was back in my classroom. But even before I had entered it, even as I approached from the hallway, I could see that the lights were turned off and the classroom was empty. At first, I thought of asking Nilsa, the center receptionist, if she had happened to see a girl in a very bright-colored down jacket, but of course Nilsa was accustomed to people constantly going in and out, and moreover, the way the politics of the place worked, I knew it would only get back that I was encouraging "visitors."

So Marisol had just decided to take off—without a word, without even a hint of explanation. I was standing there puzzling over this—my coat and scarf already on, my bus fare to hand in my pocket—when I noticed, on the lip of an open shelf that all of a sudden announced itself to my eye for its neatness, a scrap of green construction paper folded into a card, a sketchily crayoned, thin-branched little Christmas tree on its cover.

> "Merry Chrissmas, But I had to run away from my place. Things was much two messed up there. If sombody ask you just act like you dont know, I did't went you get in trobble. Nex time I come over I cold bring some Make up, you cold look just like Babra Streisan. Beutyfull just like her.
>
> XXXXs ect,
>
> Marisol"

But there wasn't a next time. She didn't come back again. And I couldn't look like Barbra Streisand even if I wanted to.

Maybe there is such a thing somewhere as a childhood that stands apart from the buffeting world—that can wind on in its own private sphere, even if that is imperfect. I've lived in this city all my life, and taught over a generation of its children: I have to keep that possibility in mind. ●

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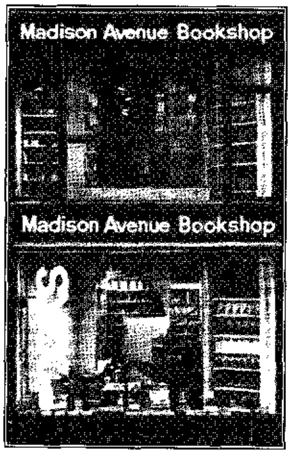

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Oh, to be in England

We Don't Want No Education

Theodore Dalrymple

Education has always been a minority interest in England. The English have generally preferred to keep the bloom of their ignorance intact and on the whole have succeeded remarkably well, despite a century and a quarter of compulsory schooling of their offspring.

In the past their ignorance was purely passive: the mere absence of knowledge. Of late, however, it has taken on a more positive and malign quality: a profound aversion to anything that smacks of intelligence, education, or culture. Not long ago, there was a popular song whose first lines successfully captured this widespread mood of hostility: We don't need no education,/We don't need no thought control. And a couple of months ago, I noticed some wall posters advertising a new song: "Poor, White, and Stupid."

I wish I could say that some irony was intended, but the cult of stupidity has become in England what the cult of celebrity is in the United States. To call someone *clever* has never been an unequivocal compliment in England, but it takes a special kind of perversity for students at the high school situated 400 yards from my hospital to say to one of their colleagues, who took an overdose because of the constant bullying to which she was subject: *You're stupid because you're clever.*

What did they mean by this apparent paradox? They meant that anyone who tried hard at school and performed well was wasting his time, when he could have been engaged in the real business of life, such as truanting in the park or wandering downtown. Furthermore, there was menace in their words: *If you don't mend your ways and join us*, they were saying, *we'll beat you up*. This was no idle threat: I often meet people in their twenties and thirties in my hospital practice who gave up at school under such duress and subsequently realize that they have missed an opportunity which, had it been taken, would have changed the whole course of their lives much for the better. And those who attend the few schools in the city which maintain very high academic standards risk a beating if they venture to where the poor white stupids live. In the last year, I have treated two boys in the emergency room after such a beating, and two others who have taken overdoses for fear of receiving one at the hands of their neighbors.

Just as it was impossible to go broke underestimating the taste of the American public, so it is impossible to overstate the abysmal educational depths to which a large proportion of the English have now sunk, boding ill for the country's future in the global market. Very few of the 16-year-olds whom I meet as patients can read and write with facility; they do not even regard my question as to whether they can read and write as in the least surprising or insulting. I now test the basic literacy of nearly every such youth I meet, in case illiteracy should prove to be one of the causes of his misery. (I had a patient recently whose brother committed suicide rather than face the humiliation of public exposure in the social security office of his inability to read the forms he was required to fill in.) One can tell merely by the way these youths handle a pen or a book that they are unfamiliar with these instruments. Even those who are under the impression that they can read and write adequately are utterly defeated by words of three syllables, and while they can sometimes read the words of a text, they no more understand them than if they had been in Church Slavonic.

I cannot recall meeting a 16-year-old white from the public housing estates which are near my hospital who could multiply nine by seven (I do not exaggerate). Even three by seven often defeats them. One boy of 17 told me, "We didn't get that far." This, after 12 years of compulsory education (or should I say, attendance at school).

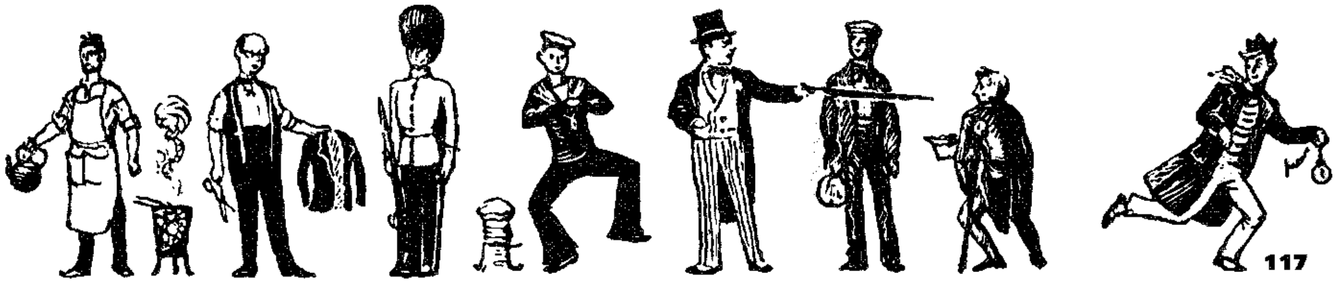
As to knowledge in other spheres, it is fully up to the standards set in mathematics. Most of the young whites whom I meet literally cannot name a single writer and certainly cannot recite a line of poetry. Not a single one of my young patients has known the dates of the Second World War, let alone of the First; some have never heard of these wars, though recently one young patient who had heard of the Second World War thought it took place in the eighteenth century. In the prevailing circumstances of total ignorance, I was impressed that he had heard of the eighteenth century. The name Stalin means nothing to these young people and does not even evoke the faint ringing of a bell, as the name Shakespeare (sometimes) does. To them, 1066 is more likely to mean a price than a date.

Thus are the young condemned to live in an eternal present, a present which merely exists, without connection to a past which might explain it or to a future which might develop from it. Theirs is truly a life of one damned thing after another. Likewise, they are deprived of any reasonable standards of comparison by which to judge their woes. They believe themselves deprived, because the only people with whom they can compare themselves are those who appear in advertisements or on television.

Mere semi-literacy and ignorance do not necessarily disqualify young people from passing public examinations, at least lower-level exams. Since failure is now regarded as fatally damaging to self-esteem, anyone who actually presents himself at an examination is likely to emerge with a certificate. I recently encountered a boy aged 16 in my clinic who wrote *Dear Sir* as *deer sur*, and *I'm* as *ime* (and whose grammar was fully consonant with his orthography), who had passed a public examination—in English.

Clearly, something very strange is happening in our schools. Our educational practices are now so bizarre that they would defy the pen of a Jonathan Swift to satirize them. In the very large metropolitan area in which I work, for example, the teachers have received instructions that they are not to impart the traditional disciplines of spelling and grammar. Pettifogging attention to details of syntax and orthography is said to inhibit children's creativity and powers of self-expression. Moreover, to assert that there is a correct way of speaking or writing is to indulge in a kind of bourgeois cultural imperialism; and to tell children that they have got something wrong is necessarily to saddle them with a debilitating sense of inferiority from which they will never recover. I have met a few teachers who disobey these instructions in an atmosphere of clandestinity, in fear for their jobs, rather reminiscent of the atmosphere which surrounded those who secretly tried to propagate truth behind the late Iron Curtain.

I was told of one school where the teachers were allowed by the headmaster to make corrections, but only five per piece of work, irrespective of the number actually present. This, of course, was to preserve the *amour propre* of the children, but it seemed not to have occurred to this pedagogue that his five-correction rule was likely to have unfortunate consequences. The teacher



might choose to correct an error in the spelling of a word, for example, and overlook precisely the same error in the next piece of work. How is a child to interpret correction based on this headmaster's principle? The less intelligent, perhaps, will regard it as a species of natural hazard, like the weather, about which he can do very little; while the more intelligent are likely to draw the conclusion that the principle of correction *as such* is inherently arbitrary and unjust.

Alarmingly, this arbitrariness reinforces precisely the kind of discipline which I see exercised around me every day by parents whose philosophy of child rearing is laissez-faire tempered by insensate rage. A small child rushes about noisily, creating havoc and wreaking destruction about him; the mother (fathers scarcely exist, except in the merest biological sense) first ignores the child, then shouts at him to stop, then ignores him, pleads with him, ignores him again, laughs at him, and then finally loses her temper, screeches abuse at him, and gives him a clout on the ear.

What is the child supposed to learn from this? He learns to associate discipline not with principle, and punishment not with his own behavior, but with the exasperated mood of his mother. This mood will itself depend upon many variables, few of them under the control of the child. The mother may be irritable because of her latest row with her latest boyfriend or because of a delay in the arrival of a social security payment, or she may be comparatively tolerant because she has received an invitation to a party or has just discovered that she is not pregnant after all. But what the child certainly never learns is that discipline has any meaning beyond the physical capacity and desire of the mother to impose it.

Everything is reduced to a mere contest of wills, and so the child learns that all restraint is but an arbitrary imposition from someone or something bigger and stronger than himself. The ground is laid for a bloody-minded intolerance of any authority whatever, even should that authority be based upon patently superior and benevolent knowledge and wisdom. Authority of any kind is experienced as an insult to the self, and must therefore be challenged *because* it is authority. The world is thus a world of permanently inflamed egos, trying to impose their wills on one another.

In the schools, young children are no longer taught in whole classes but in little groups. It is hoped that they will learn by discovery and play. There is no blackboard and no rote learning. Perhaps the method of teaching by turning everything into a game can work when the teacher is talented and the children are already socialized to learn; but when, as is usually the case, neither of these conditions obtains, the results are disastrous, not just in the short term but probably forever.

The children themselves eventually come to know that something is wrong, even if they are not able to articulate their knowledge. Of the generations of children who grew up with these pedagogical methods, it is striking how many of the more intelligent among them sense by their early twenties that something is missing from their lives. They don't know what it is, and they ask me what it could be. I quote them Francis Bacon: "It is a poore Center of a Mans Actions, Himselfe." They ask me what I mean, and I reply that they have no interests outside themselves, that their world is as small as the day they entered it, and that their horizons have not expanded in the least.

"But how do we get interested in something?" they ask.

This is where the baleful effect of education as mere entertainment makes itself felt. For to develop an interest requires powers of concentration and an ability to tolerate a degree of boredom while the elements of a skill are learned for the sake of a worthwhile end. Few people are attracted naturally by the vagaries of English spelling or by the rules of simple arithmetic, yet they must be mastered if everyday life in an increasingly complex world is to be negotiated successfully. And it is the plain duty of adults, from the standpoint of their superior knowledge and experience of the world, to impart to children what they need to know so that later they may exercise genuine choice. The demagogic equation of all authority, even over the smallest child, with unjustifiable political authoritarianism leads only to personal and social chaos.

Alas, the age of 20 is not the age at which to learn either to concentrate or to tolerate effort which is in itself not enjoyable. Never having experienced the pleasures of mastering something through disciplined effort, and with minds profoundly influenced by the swiftly moving and superficially exciting images of television, these young adults find that a sustained interest in anything is now beyond them. And in the modern urban world, anyone who cannot concentrate is truly a lost soul, for the only communities in such a world are those which grow up around interests which people hold in common. Moreover, in an age of increasing technological change, those without the ability or inclination to learn will be left farther and farther behind.

The gimcrack pedagogical notion that education should be "relevant" to children's lives gained currency in England in the sixties. The thought that this would confine children to the world that they already knew—and a pretty dismal world it was, too, as anyone with the slightest acquaintance with English working-class life will testify—apparently never occurred to those educationists who claimed such exceptional sympathy with the relatively disadvantaged. The result was that a route—perhaps the one most frequently traveled—to social advancement was substantially closed to them.

Unfortunately, it is extremely difficult to overturn these educational (or anti-educational) developments even now, when the central government has belatedly realized their disastrous consequences. Why? First, the teachers and the teachers of the teachers in the training colleges are deeply imbued with the kinds of educational ideas which have brought us to this pass. Second, a huge educational bureaucracy has grown up in England (one bureaucrat per teacher, pullulating like admirals in a South American navy) which uses every subterfuge to prevent change, from falsification of figures to willful misinterpretation of government policy. The Minister of Education may propose, but the bureaucracy disposes. Thus it happens that Britain spends a higher percentage of its GDP on education than any of its competitors and ends up with a catastrophically ill-educated population, whose lack of intelligence is evident from their ruminant gaze to be seen on every street in the country, and which is remarked upon by all my foreign friends.

Bad as educational policy has been, however, there remains an important and refractory cultural dimension to the problem. It is easy—conceptually at least—to see what should be done on the plane of policy, but the English disdain for education is not easily overcome even in principle.

In the neighborhood in which I work, there are many immigrant groups. The largest are those from northwest India, Bangladesh, and Jamaica. There is also a large and settled white working class. The children from all these groups go to the same bad schools with the same bad teachers, but the results are dramatically different. The children of poor and unemployed immigrants from northwest India are never illiterate or semi-literate; a very respectable number go on to further education, even at the highest level, despite overcrowding in the home and apparent poverty. The other groups vie with each other to achieve the lowest educational level.

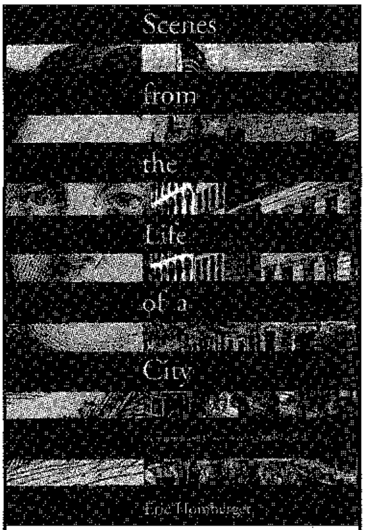
The lamentable fact is that a considerable proportion of the English population is simply unaware of the need for education. It seems stuck with the Victorian idea that England is by right and divine providence the workshop of the world, that Englishmen by virtue of their place of birth come into the world knowing all that it is necessary for them to know, and that if there are no jobs to employ their unskilled (and, it must be said, rather reluctant) labor, it is the fault of the government in league with the plutocrats in top hats and tails, who have conspired to exploit cheap Japanese labor. One thing an unemployed young Englishman is definitely not going to do is to make a concerted effort to equip himself with a salable skill.

I have had the following conversation on innumerable occasions with young men of about 20 who have been unemployed since leaving school, and whose general educational level is outlined above:

"Have you thought of improving your education?"
"No."
"Why not?"
"There's no point. There are no jobs."
"Could there be any other reason to get educated?"
"No." (This after puzzlement as to what I could possibly mean.)

There are two things to notice in this conversation. The first is that the unemployed young person considers the number of jobs in an economy as a fixed quantity. Just as the national income is a cake to be doled out in equal or unequal slices, so the number of jobs in an economy has nothing to do with the conduct of the people who live in it, but is immutably fixed. This is a concept of the way the world works which has been assiduously peddled, not only in schools during "social studies" but in the media of mass communication.

The second thing worthy of remark is the complete absence of the idea that mental culture is a good in itself, that it has a value irrespective of one's employment prospects. Just as patients' responses to the same illness and disability vary according to their predisposition and character, so does a man's response to unemployment. A man with an interest



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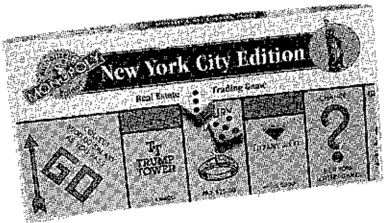

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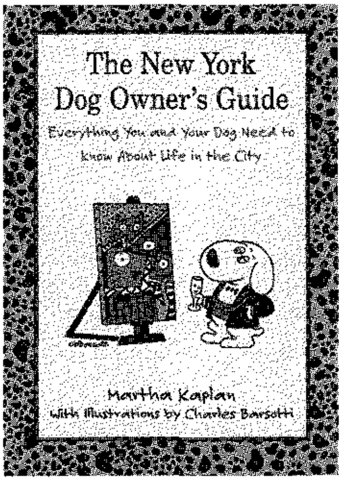
to pursue, or at least with the mental equipment to pursue, an interest is not in such dire straits as a man obliged by the *tabula rasa* of his mind to stare vacantly at the four walls for weeks, months, or years on end. He is more likely to come up with an idea for self-employment or at the very least to seek work in places and in fields which are new to him. He is not condemned to stagnation.

There is one great psychological advantage to the white underclass in their disdain for education: it enables them to maintain the fiction that the society around them is grossly, even grotesquely, unjust, and that they themselves are the victims of this injustice. If, on the contrary, education were seen by them as a means available to all to rise in the world, as indeed it could be and is in many societies, their whole viewpoint would naturally have to change. Instead of attributing their misfortunes to others, they would have to look inward, which is always a painful process. Here we see the reason why scholastic success is violently discouraged, and those who pursue it persecuted, in underclass schools: for it is perceived, inchoately no doubt, as a threat to an entire *Weltanschauung*. The success of one is a reproach to all.

And a whole way of life is at stake. This way of life is akin to drug addiction, of which crime is the heroin and social security the methadone. The latter, as we know, is the harder habit to kick, and its pleasures, though less intense, are longer lasting. The sour satisfaction of being dependent on social security resides in its automatic conferral of the status of victim, which in itself simultaneously explains one's failure and absolves one of the obligation to make something of oneself, *ex hypothesi* impossible because of the unjust nature of society which made one a victim in the first place. The redemptive value of education blows the whole affecting scene apart: no wonder we don't want no education.

In one sense (and in one sense alone), however, the underclass has been victimized, or perhaps *betrayed* is a better word. The educational absurdities foisted on the lower orders were the idea not of the lower orders themselves but of those who were in a position to avoid their baleful effects: that is to say, middle-class intellectuals. If I were inclined to paranoia (which fortunately I am not), I should say that the efforts of educationists were part of a giant plot by the middle classes to keep power for themselves and to restrict competition, in the process creating sinecures for some of their less able and dynamic members—namely the educationists. But if these middle classes have maintained their power, it is in an increasingly enfeebled and impoverished country. ●

Illustrations from The Oxford Nursery Rhyme Book, *by Iona and Peter Opie.*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Letters

Open Admissions

To the editor:
Heather Mac Donald ["Downward Mobility," Summer 1994] asserts that the City University's remedial function has come to dominate the university, lowering the value of a senior college degree. At the same time she attacks CUNY for its low graduation rates. This seems contradictory. Everyone agrees that the graduation rate is lower than it should be. Yet this is the clearest refutation of the idea that open admissions has destroyed academic standards. The graduation rate is low in part because we do not simply pass students along.

Further, remediation does not dominate college life, at least so far as I can see at Hunter College. Most entering freshmen need remedial work, but entering freshmen are not representative of Hunter students: Hunter accepts a huge number of transfers, and many of the least-prepared freshmen wash out early. Remedial work accounts for less than 6 percent of seats in undergraduate Hunter classes.

Ms. Mac Donald raises important issues, but the impression she gives is out of balance. For my students, such a portrayal is truly dangerous. The "value" of a degree is set in a "market." If employers and graduate schools perceive a CUNY education as inferior, its value is lessened, regardless of what I do in the classroom. I disagree that a liberal arts education is inappropriate for average New York City high school graduates, who might be better off at "air-conditioning school." Call me old-fashioned, but I do not think college should be about vocational training—it should be about creating broadly educated, culturally literate adults.

Philip Kasinitz
Professor of Sociology
Hunter College
New York, N.Y.

To the editor:
That CUNY's standards have plummeted is common knowledge. The faculty I know are quite aware of it. Privately they talk about students at the very edge of literacy, unable to understand much of what they read, unable to write coherently—not all students, of course, but many.

When I went to City College in the forties, it was a quite different place. It had available a very large group of applicants, most the children of poor, Jewish, education-obsessed parents. The college could choose from among the best of them, and it did so. It was a stark, simple meritocracy.

City was not a great teaching college. Too often the instruction was routine, the teacher merely going through the motions. Nor were its students paragons of character and scholarship. Some—I include myself—were intellectual roughnecks, eager to show how smart they were by crushing others, including their teachers when necessary. Some were utterly without curiosity or a sense of fancy.

But when the right mix of intelligence and intellectual excitement took place, there was nothing quite like it. One of my classmates was engrossed in a close study of the transcripts of the Moscow trials, indexing all of their lies. Another was absorbed in a translation of *Finnegans Wake*, then just published. And so on. Ah, those were the days.

Joseph Adelson
Professor of Psychology
University of Michigan
Ann Arbor, Mich.

To the editor:
As a 1987 graduate of Hunter College, I found Ms. Mac Donald's article distressingly all too accurate. Because CUNY has defined minimum educational standards down through open admissions and similar misguided policies, there has been severe harm to its reputation and to the thousands of hardworking CUNY students, who learn after graduation that their degrees are not respected by prospective employers and graduate schools.

Because Hunter continues to have a large number of well-qualified and even prominent professors, one can still get an excellent education. (I believe that this is also the case at some other CUNY colleges.)

However, the shrinking reputation of CUNY belies the quality of education available, causing only harm to its students and graduates.

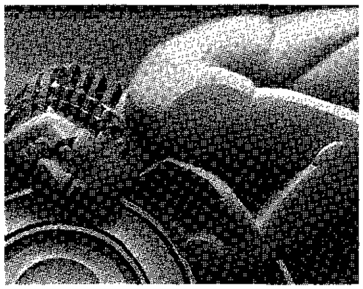
Daniel O'Neill
Woodside, N.Y.

To the editor:
Ms. Mac Donald quotes me as saying: "What black kids want is to get out of the ghetto, so we should figure out what they are qualified for. If that turns out to be air-conditioning school, we should give them that opportunity." I would have hoped that no reader would interpret this to mean anything as moronic as that air-conditioning repair is the most that any black person could reasonably aspire to. However, it is necessary to clarify beyond the possibility of misunderstanding.

In the late sixties there was wide agreement that the educational system should do for each individual whatever would best facilitate his upward mobility. For high school graduates whose abilities and education rendered college appropriate—and there were a good number—resources would be spent to get a college education. Those students who clearly suffered an educational deprivation would be supported in whatever way was necessary to enable them to attain that which they could realistically attain—in my example, air-conditioning repair expertise, which, incidentally, requires above-average intelligence and earns above-average income.

Some derided this "tracking"; in the end, opponents won. The price for this victory has been yet another failure imposed on students who could have had the opportunity to gain a skill, enter the middle class, and spare their children from the disadvantages they had suffered.

Steven Goldberg
Chairman
Department of Sociology
City College
New York, N.Y.


ANDREW BORDWIN

To the editor:
Many of CUNY's entering students require instruction from specialists in English as a second language (ESL) and English as a second dialect (ESD). Forty percent of CUNY students come from non-English-speaking households; if we add to this figure the students who speak a dialect of English at home, as many as three-quarters of entering CUNY students need ESL or ESD instruction.

Ms. Mac Donald is comparing apples and oranges: CUNY's challenge is today's city population, not 1954's. New immigrants come with new backgrounds, and it is the City University's mission to meet the needs of its population.

Open admissions is not a "failed policy" but a failure properly to execute a policy, specifically in the ESL/ESD area. Many critics lump ESL and ESD students together as if they represent a single type—the inadequately prepared student who needs remediation. But both groups embrace a wide variety of states of academic preparedness.

The teachers of ESL and ESD do have some things in common. Both have training in methodology and language that is radically different from that of most English teachers. Above all, they have been trained in sociocultural, gender, and ethnic studies and have a special sensitivity to the needs of language and dialect minority students.

Some CUNY colleges appear to be doing their best to ignore ESL and ESD students. This lack of commitment is compounded by scarcity of funding for what the enemies of open admissions call "remedial" instruction—a scarcity that affects ESL and ESD students throughout the university.

Effie Papatzikou Cochran
Assistant Professor
Baruch College
New York, N.Y.

Letters

Heather Mac Donald responds: CUNY's high drop-out rate suggests only that its admissions standards are even lower than its academic standards. It says nothing about whether those academic standards are themselves objectively high. The original premise of open admissions—that high standards could be maintained alongside radically loosened entrance requirements—has proved false. Nearly all the professors I spoke to admitted to having drastically lowered their definition of college performance.

It is that redefinition, not anything journalists may write about CUNY, that has set the value of CUNY's degree in the marketplace. As Mr. O'Neill suggests, employers reached their own conclusions about open admissions before *City Journal* did.

I do not dispute that there are a great many hardworking and talented students throughout CUNY. Many make Herculean efforts to attend college. Such students are not well served, however, by a university system that devotes significant resources to teaching what should have been learned in grammar and high school. The SEEK program exemplifies the skewed priorities of CUNY's senior colleges. To set aside one in ten senior college spots and spend at least $14.3 million annually on students whose graduation rate is 13 percent defies all common sense. Under any realistic evaluation of their skills, SEEK students would be directed toward community college, vocational training, or adult education; that they are not suggests how large a role politics continues to play in the administration of the university.

Professors Kasinitz and Cochran both argue that the remedial function at CUNY is slight—indeed, according to Professor Cochran, *too* slight. I disagree. In addition to the numerous courses offered by the ubiquitous departments of remedial education, counseling and tutoring centers are springing up across the university. CUNY continues to create new programs to stanch the flow of unprepared students out of the university: for example, it spends $5.4 million annually to try to decrease the one-third drop-out rate of first-year students, and it has established summer and winter coaching sessions for students likely to fail their reading, writing, and math entrance exams.

Such large-scale efforts to bring unprepared students up to speed have characterized CUNY's response to open admissions from the start. Professor Cochran's view that the failure of open admissions results from inadequate resources is therefore unpersuasive. There is no reason to believe that increasing the budget for remedial programs would be money well spent. Indeed, some state university systems are cutting back on remedial education, having concluded that using college to try to teach someone to read for the 13th time is inefficient. A more rational approach would channel the resources CUNY spends teaching basic skills to elementary and high schools, where the effort has a greater chance of success.

ESL students do present a different set of questions than do "English as a second dialect" students, as Professor Cochran calls native English-speakers who cannot read or write at the college level. The remedial industry at CUNY sprang up in response to the influx of unprepared American-born students, not non-native speakers. Indeed, if CUNY's main problem were educating immigrants who already know how to read and write in their native language, its remedial departments would look quite different.

The ideal of the liberal arts education, which Professor Kasinitz rightly praises, will more likely be realized if CUNY evaluates which students possess the requisite skills. To define the mission of CUNY's senior colleges, as Professor Cochran does, as "meeting the needs" of all the city's high school graduates risks watering down the liberal arts and turning education into therapy. It's simply not true that every high school graduate is prepared to benefit from college. Better to restore rigorous standards at the senior colleges and use the community colleges for remedial work. Finally, making vocational training more available to students without advanced academic skills, as Professor Goldberg recommends, implies no judgment about the abilities of New York's graduates as a whole.

Where to Cut the Board of Ed

To the editor:
Edward Costikyan ["Breaking Up the Board of Ed," Autumn 1994] identifies wasteful bureaucracies within the New York City school system but then states: "Stripping away unneeded centralized functions . . . would take years of struggle, conflict, and infighting." Would it take years to eliminate a bureaucracy? I imagine that it would grind to a halt immediately if its funding ceased. Let me, as a guidance counselor, former teacher, and 30-year habitué of the system, offer three suggestions.

The labyrinthine Bureau of Supplies should be immediately eliminated. The prices it obtains are higher than what could be negotiated with discount stores, to say nothing of the months-long wait for delivery. Every principal should be assigned a supply budget and be allowed, in conjunction with staff and parents, to set priorities and negotiate contracts.

The bureau that supplies school meals should be drastically cut back. It maintains some 30 offices in districts, staffed with clerks, supervisors, and auditors. Parents must fill out detailed financial forms, which school staff evaluate and district offices double-check, to determine their children's eligibility. This bureaucracy costs at least as much as the delivery and preparation of the meals themselves. Since some 80 percent of students are eligible for free meals, simply allowing them to everyone would bring huge savings.

The Bureau of Pupil Transportation should also be eliminated. At present, students receive monthly transportation cards, their fares determined by the distance from school, with a large majority eligible for free transportation. It would be easier and cheaper to permit all students to use public transportation free for two hours before and after school upon presentation of their school ID or program card.

The major cause of the dysfunction that so disturbs Mr. Costikyan and many others is the entrenched and entangling bureaucracies: the New York City school system has the highest ratio of non-teaching to teaching personnel of any system in the country. Cutting these bureaucracies is the place to begin. Once this has been accomplished, one could better consider basic structural reform.

Frederic Wile
New York, N.Y.

Hitting the Brakes

To the editor:
I have read Julia Vitullo-Martin's article ["Quiet, Please," Autumn 1994]. We at the Department of Sanitation fully understand citizens' frustration over the "astounding amount of New York's noise problem" caused by garbage-truck brakes and its effect on the city's quality of life. Indeed, for four years, the brake-noise problem has been a high priority for the department's maintenance force.

The problem, however, was magnified by the federal government's ban on the manufacture of asbestos brake linings. Much of the brake noise is due to the use of substitute materials for the quieter asbestos. Over the past three years, we have investigated 46 different solutions, using a variety of materials, in an attempt to reduce brake noise. Thus far, only two brake linings have proved effective in reducing noise in the short term. The result of long-term usage is still a question. But New Yorkers should know that we are doing all we can to solve this annoyance as quickly as possible.

John J. Doherty
Commissioner of Sanitation
New York, N.Y.

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Contributors

Brooke Allen has written for the stage, for television, and for publications including the *New York Times*, the *Wall Street Journal*, and *The European*.

Theodore Dalrymple is a physician who regularly sees patients in an English prison. His column, "Oh, to be in England," will be a regular feature of *City Journal*.

Nathan Glazer, a member of *City Journal*'s publication committee, is a professor of education and sociology at Harvard University.

Michael S. Gruen has practiced law in New York City since 1966. Many of his cases concern state and federal constitutional issues.

Anne Hollander is the author of *Seeing Through Clothes*, *Moving Pictures*, and, most recently, *Sex and Suits*.

Peter Huber is a senior fellow of the Manhattan Institute and author of *Orwell's Revenge: The 1984 Palimpsest* (Basic Books). Todd Ricketts and Gary Stahlberg Jr. provided research assistance for his article.

Johanna Kaplan is author of *Other People's Lives*, a collection of stories, and *O My America*, a novel. She has twice received the National Jewish Book Award for fiction.

Maury Klein is a professor of history and director of the honors program at the University of Rhode Island. He has written nine books, including a biography of Jay Gould.

Heather Mac Donald is a contributing editor of *City Journal*. Her articles have also appeared in the *New York Times*, the *Wall Street Journal*, *The New Republic*, and *The New Criterion*.

Richard E. Morgan is William Nelson Cromwell Professor of Constitutional Law and Government at Bowdoin College and author, among other books, of *Disabling America: The "Rights Industry" in Our Time*. He is at work on two books on constitutional law.

Sally Satel, a psychiatrist on leave from the Yale University School of Medicine, is currently a visiting professor at the University of Pennsylvania.

Lydia Segal, an assistant professor at John Jay College, formerly served as counsel to the Special Commissioner of Investigation for the New York City School District.

William J. Stern, a private investor, was chairman and president of the New York State Urban Development Corporation from 1983 to 1985.

James Q. Wilson is James Collins Professor of Management at UCLA. He is the author or co-author of 13 books, including *The Moral Sense*, *Thinking About Crime*, *Bureaucracy*, and *On Character*. His article is adapted from the Manhattan Institute's 1994 Wriston Lecture.

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New York Diarist

CULVER PICTURES

Official Looking

Anne Hollander

Next October, New York police officers will look different—more the way they used to look in old black-and-white movies. The new uniforms ordered by Police Commissioner William Bratton will give officers the dark, crisp look they had in crime pictures where the cops were the generic good guys, uniformed restorers of urban peace after bloody wars among chalk-striped crooks, rumpled grifters, and fur-clad vamps.

Commissioner Bratton aims at improving the city by improving the image of the police. It's true that the right uniforms can have a galvanizing effect. Their look of authority and solidarity strikes the eye, inspiring awed excitement. It also strikes each wearer's inward eye and lends him personal force, an enhanced self-respect that promotes bravery and dedication.

In the Middle Ages, the deep inward and outward power of uniform clothing was well understood by religious orders and the household guards of great families. Urban police and standing armies were latecomers to the idea. Military troops didn't dress all alike until Oliver Cromwell discovered that his citizen's army fought better if the soldiers all wore the same outfit, instead of just the usual badges.

But it was Frederick the Great of Prussia who created the enduring tradition of military chic, making the uniform a tight-fitting fetish of spit and polish and rigidity, with a mighty variety of buttons, boots, braid, colored facings, and stiff neckbands. He had discovered the potent idea that uniforms should suggest discipline, not just service.

Napoleonic uniforms began to adopt exotic ferocity, using fur trimming and plumes, sashes and sabers, capes and frog-closings in hopes of inspiring fear. The only risk was inspiring laughter instead.

By the twentieth century, glittering display had been left to the uniforms for marching bands and hotel doormen. Fighting men went on to a visual ideal of restraint, readiness, and perfect order, with minimal ostentation.

The earliest Metropolitan Police, the London "peelers" in their stovepipe hats and tailcoats, had been deliberately kept from looking military at all. The British public of 1829, fed up with Napoleonic nonsense, was not willing to be kept in order by anything resembling a soldiery. In this century, that's just what we want, but the effect has to vary to suit the moment.

How to dress the police? Their uniforms must render them forceful but never ridiculous; they must generate respect—not terror, not giggles.

Somewhere in the early 1970s, when cops still were commonly called pigs, police uniforms, while still following the military formula, were rendered friendly and human, even individual. The severe dark blue of cops' shirts gave way to the welcome light blue of autumn skies and rural ponds, a genial color associated with helpful repairmen, mailmen, or airline personnel. The gun belt hung nonchalantly below the regular belt; each officer disposed his handcuffs, nightstick, gun, and so on around it in a manner most comfortable to him, in cases of his own choosing. The effect was personal and collectively unthreatening.

These days the harmless look has lost its virtue. The urban climate urges the hasty return of discipline, even of threat, in police appearance—if only to stand up to the menacing civilian fashions flaunted on the street. The new navy blue police shirts will be remilitarized, with bright stripes on the sleeves indicating rank and length of service. The new gun belt will attach to the ordinary belt, to make a single trim line around the waist. All equipment will be tightly affixed to it in regulation cases.

In the era of love beads, casual pale blue police looked serious enough. In these days of shaved heads and grim boots, some answering aura of rigor—undisguisedly military and somewhat forbidding—is clearly needed for constabulary fashion. ●

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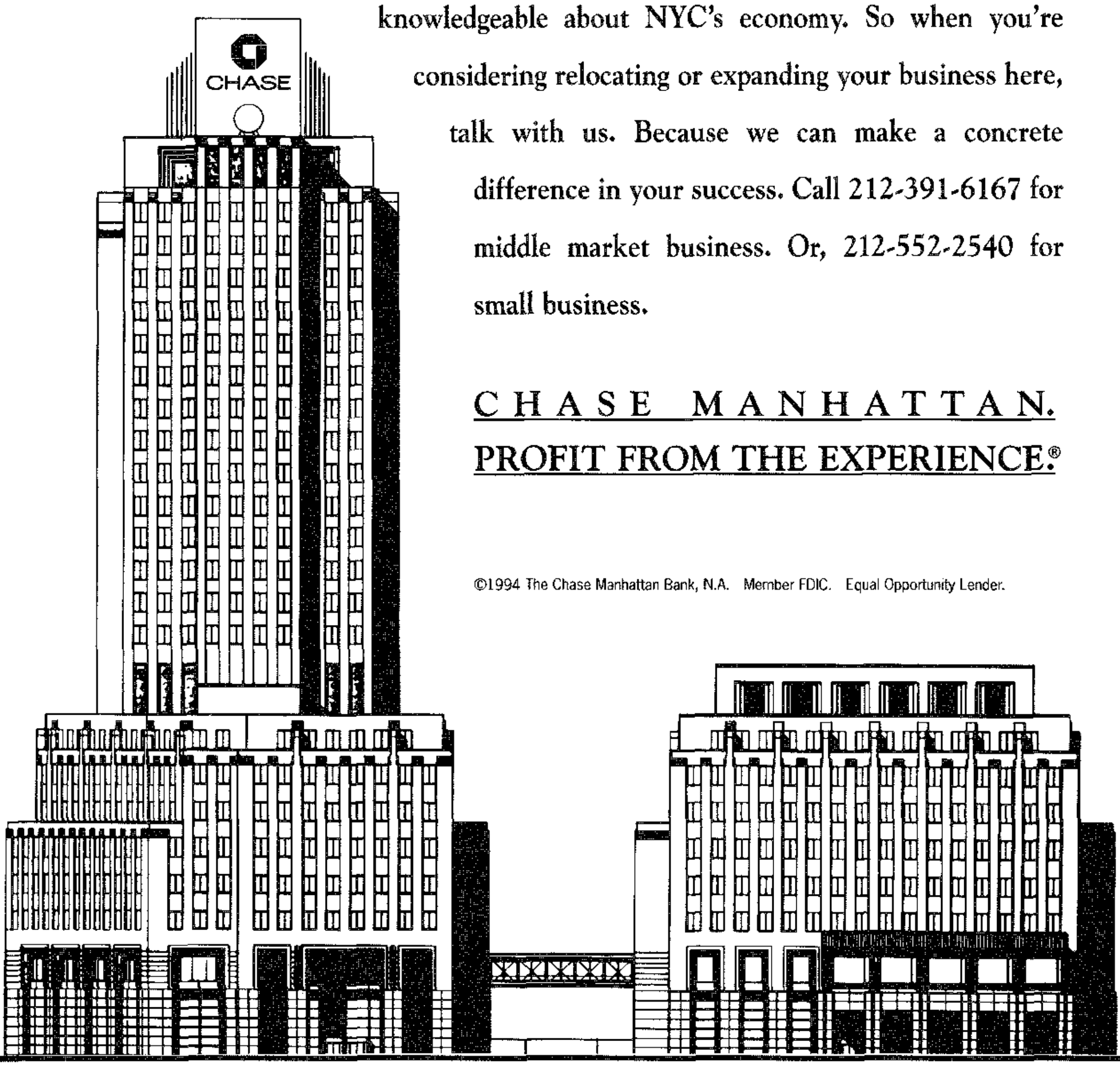

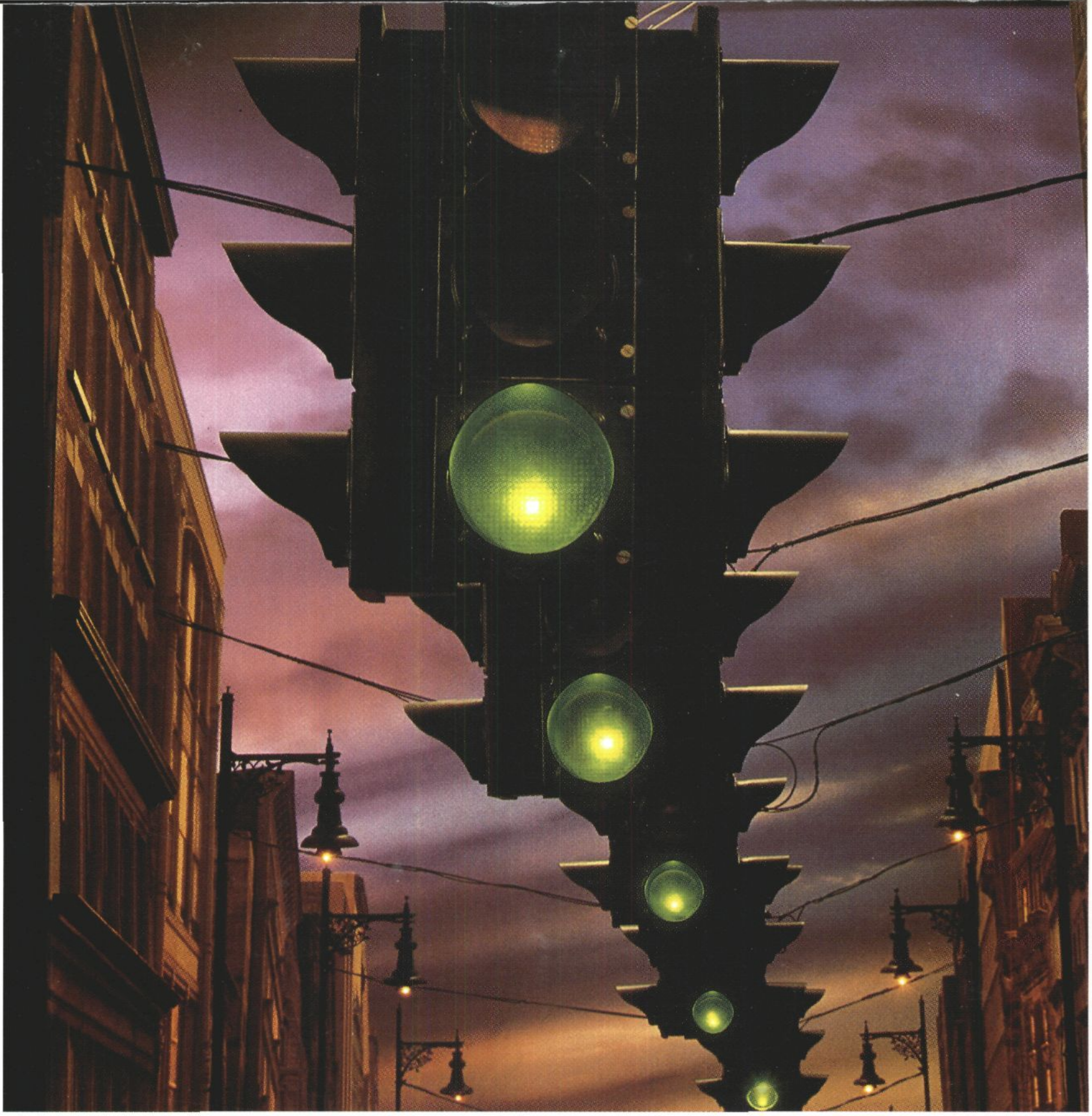

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